



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

05 RM 051

Date: May 20, 2005

Author: Don Richards, Senior Research Analyst

Re: Residential Property (Landlord/Tenant) Laws

QUESTIONS

1) Has the Wyoming Legislature considered legislation in the last 10 years that addresses landlord-tenant relationships in residential rental properties? If so, provide copies of successful legislation.

2) What states, if any, have imposed "model" legislation in this area?

ANSWERS

1) Yes, in 1999 the Wyoming Legislature adopted the "Residential Rental Property Act." (1999 HB 44; '99 Laws, Ch. 198. See Attachment A for a copy of the Act.) In 1997, the Legislature considered SF 46, a precursor to the 1999 legislation. The 1997 proposal passed the Senate but failed in the House on third reading. The successful Act (1999 HB 44) specifies the duties of owners (landlords) and renters, imposes duties on each, and prescribes remedies for resolving conflicts.

Short History. The 1997 legislation, sponsored by Senator Phillips was largely based upon similar legislation in Utah. The Joint Judiciary Interim Committee resurrected the 1997 legislation as a starting point for the 1999 Act. However, after amendment, the final Act adopted in Wyoming is substantially different than the Utah law. Committee records include numerous individuals and organizations that commented on the legislation, including the Wyoming Association of Realtors, Wyoming Manufactured Housing Association, Cheyenne Housing Authority, Wyoming Church Coalition, and a county court judge.

In addition, two law review articles, one written prior to the passage of the Residential Rental Property Act, and one written as a critique of the Act provide additional perspectives on legal relations between landlords and tenants in Wyoming.^{1,2}

2) The National Conference of Commissioners on Uniform State Laws (NCCUSL) has adopted and promotes a "Uniform Residential Landlord and Tenant Act" (URLTA). The model legislation was initially completed in 1972 and further amended in 1974. According to NCCUSL, 20 states have adopted this model legislation, including two of Wyoming's neighboring states: Montana and Nebraska. Many of these states adopted the legislation in the mid 1970s. Nonetheless, the legislation was introduced in Alabama as recently as 2005 but was unsuccessful. (See Attachment B for a copy of the model legislation.)

¹ Noonan, Krista and Preator, Frederick, "Implied Warranty of Habitability: It is Time to Bury the Beast Known as Caveat Emptor," *Land and Water Law Review*, Vol. XXXIII, Number 1, p. 329 (1998).

² Guadio, Arthur, "Wyoming's Residential Rental Property Act – A Critical Review," *Land and Water Law Review*, Vol. XXXV, Number 2, p. 455 (2000).

Legislation very similar to URLTA, but *not identical* has previously been introduced in Wyoming. Specifically, in 1993 (HB 113) and again in 1995 (HB 182), landlord and tenant legislation, sponsored by the (then) Representative Mockler on both occasions, was introduced, but did not pass.

If you have any questions, do not hesitate to contact LSO Research staff at 777-7881.

ATTACHMENT A

ORIGINAL HOUSE
BILL NO. 0044

ENGROSSED

ENROLLED ACT NO. 134, HOUSE OF REPRESENTATIVES

FIFTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
1999 SESSION

AN ACT relating to residential rental property; specifying duties of owners and renters; defining terms; providing for notice to repair or correct conditions; imposing duty to correct upon owner; authorizing termination of rental agreement; specifying conditions for renter's deposit; prescribing remedies and imposing penalties; specifying disposition of abandoned property; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 1-21-1201 through 1-21-1211 are created to read:

ARTICLE 12 RESIDENTIAL RENTAL PROPERTY

1-21-1201. Definitions.

(a) As used in this article:

(i) "Owner" means the owner, lessor or sublessor of a residential rental unit and for purposes of notice and other communication required or allowed under this article, "owner" includes a managing agent, leasing agent or resident manager unless the agent or manager specifies otherwise in writing in the rental agreement;

(ii) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules or any other provisions regarding the use and occupancy of a residential rental unit;

(iii) "Renter" means any renter, lessee, tenant or other person entitled under a rental agreement to occupy a residential rental unit to the exclusion of others;

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(iv) "Residential rental unit" means a renter's principal place of residence and includes the appurtenances, grounds, common areas and facilities held out for the occupancy of the residential renter generally and any other area or facility provided to the renter in the rental agreement, excluding a mobile home lot or recreational property rented on an occasional basis;

(v) "Termination" means the lawful ending or cessation of a rental agreement for any reason including expiration of the rental period, voluntary termination by mutual agreement of the parties, termination in accordance with W.S. 1-21-1203(d), abandonment of the leased premises by the renter prior to expiration of the rental period or termination resulting from court order.

1-21-1202. Duties of owners and renters; generally.

(a) Each owner and his agent renting or leasing a residential rental unit shall maintain that unit in a safe and sanitary condition fit for human habitation. Each residential rental unit shall have operational electrical, heating and plumbing, with hot and cold running water unless otherwise agreed upon in writing by both parties. Provided, however, this section shall not prevent the rental of seasonal rental units such as summer cabins which are not intended to have such amenities.

(b) Each renter shall cooperate in maintaining his residential rental unit in accordance with this article.

(c) This article does not apply to breakage, malfunctions or other conditions which do not materially affect the physical health or safety of the ordinary renter.

(d) Any duty or obligation in this article may be assigned to a different party or modified by explicit written agreement signed by the parties.

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1-21-1203. Owner's duties; notice by renter of noncompliance; duty to correct; exceptions; termination of rental agreement; liability limited.

(a) To protect the physical health and safety of the renter, each owner shall:

(i) Not rent the residential rental unit unless it is reasonably safe, sanitary and fit for human occupancy;

(ii) Maintain common areas of the residential rental unit in a sanitary and reasonably safe condition;

(iii) Maintain electrical systems, plumbing, heating and hot and cold water; and

(iv) Maintain other appliances and facilities as specifically contracted in the rental agreement.

(b) If the renter is current on all payments required by the rental agreement and has reasonable cause supported by evidence to believe the residential rental unit does not comply with the standards for health and safety required under this article, the renter shall advise the owner in writing of the condition and specify the remedial action the renter requests be taken by the owner. Within a reasonable time after receipt of this notice, the owner shall either commence action to correct the condition of the residential rental unit or notify the renter in writing that the owner disputes the renter's claim. The notices required by this subsection shall be served by certified mail or in the manner specified by W.S. 1-21-1003.

(c) The owner shall not be required to correct or remedy any condition caused by the renter, the renter's family or the renter's guests or invitees by inappropriate use or misuse of the property during the rental term or any extension of it.

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(d) The owner may refuse to correct the condition of the residential rental unit and terminate the rental agreement if the costs of repairs exceeds an amount which would be reasonable in light of the rent charged, the nature of the rental property or rental agreement. If the owner refuses to correct the condition and intends to terminate the rental agreement, he shall notify the renter in writing within a reasonable time after receipt of the notice of noncompliance and shall provide the renter with sufficient time to find substitute housing, which shall be no less than ten (10) days nor more than twenty (20) days from the date of the notice. If the rental agreement is terminated, the rent paid shall be prorated to the date the renter vacates the unit and any balance shall be refunded to the renter along with any deposit due in accordance with W.S. 1-21-1208.

(e) The owner is not liable under this article for claims for mental suffering or anguish.

1-21-1204. Renter's duties.

(a) Each renter shall:

(i) Maintain the residential rental unit occupied in a clean and safe condition and not unreasonably burden any common area;

(ii) Dispose of all garbage and other waste in a clean and safe manner;

(iii) Maintain all plumbing fixtures in a condition as sanitary as the fixtures permit;

(iv) Use all electrical, plumbing, sanitary, heating and other facilities and appliances in a reasonable manner;

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(v) Occupy the residential rental unit in the manner for which it was designed and shall not increase the number of occupants above that specified in the rental agreement without written permission of the owner;

(vi) Be current on all payments required by the rental agreement;

(vii) Comply with all lawful requirements of the rental agreement between the owner and the renter; and

(viii) Remove all property and garbage either owned or placed within the residential rental unit by the renter or his guests prior to termination of the rental agreement and clean the rental unit to the condition at the beginning of the rental agreement.

1-21-1205. Prohibited acts by renter.

(a) No renter shall:

(i) Intentionally or negligently destroy, deface, damage, impair or remove any part of the residential rental unit or knowingly permit any person to do so;

(ii) Interfere with another person's peaceful enjoyment of the residential property; or

(iii) Unreasonably deny access to, refuse entry to or withhold consent to enter the residential rental unit to the owner, agent or manager for the purpose of making repairs to or inspecting the unit, and showing the unit for rent or sale.

1-21-1206. Renter's remedies; notice to owner or agent; judicial remedy; attorneys' fees; rights under termination of rental agreement.

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(a) The remedies set forth in this section are available to a renter in compliance with all provisions of W.S. 1-21-1204 and 1-21-1205 when the rental agreement has not been lawfully terminated pursuant to W.S. 1-21-1203(d).

(b) If a reasonable time has elapsed after the renter has served written notice on the owner under W.S. 1-21-1203 and the owner has failed to respond or to correct the condition described in the notice, the renter may cause a "notice to repair or correct condition" to be prepared and served on the owner by certified mail or in the manner specified by W.S. 1-21-1003. This notice shall:

(i) Recite the previous notice served under W.S. 1-21-1203(b);

(ii) State the number of days that have elapsed since the notice was served and that under the circumstances the period of time constitutes the reasonable time allowed under W.S. 1-21-1203(b);

(iii) State the conditions included in the previous notice which have not been corrected;

(iv) Demand that the uncorrected conditions be corrected; and

(v) State that if the owner fails to commence reasonable corrective action within three (3) days he will seek redress in the courts.

(c) If the owner has not corrected or used due diligence to correct the conditions following notice under this section, or if the owner has notified the renter that the claim is disputed, the renter may commence a civil action in county or justice of the peace court. The court shall endorse on the summons the number of days within which the owner is required to appear and defend the action, which shall not be less than three (3) nor more than twenty (20)

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days from the date of service. Upon a showing of an unreasonable refusal to correct or the failure to use due diligence to correct a condition described in this article, the renter may be awarded costs, damages and affirmative relief as determined by the court. Damages awarded to the renter may include rent improperly retained or collected. Affirmative relief may include a declaration terminating the rental agreement, or an order directing the owner to make reasonable repairs.

(d) If the court terminates the rental agreement pursuant to subsection (c) of this section, the renter is entitled to receive a refund of the balance of the rent and the deposit on the rental unit within thirty (30) days of the date the agreement is ordered terminated. The renter shall be required to vacate the rental unit no sooner than ten (10) days nor later than twenty (20) days after termination of the rental agreement by a court.

1-21-1207. Required notice of nonrefundable deposit.

Any rental agreement shall state whether any portion of a deposit is nonrefundable and written notice of this fact shall also be provided to the renter at the time the deposit is taken by the owner or his designated agent.

1-21-1208. Deductions from deposit; written itemization; time limits; failure to give notice; recovery by renter; utilities deposit; penalty.

(a) Upon termination of the rental agreement, property or money held as a deposit may be applied by the owner or his agent to the payment of accrued rent, damages to the residential rental unit beyond reasonable wear and tear, the cost to clean the unit to the condition at the beginning of the rental agreement and to other costs provided by any contract. The balance of any deposit and prepaid rent and a written itemization of any deductions from the deposit

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together with reasons therefor, shall be delivered or mailed without interest to the renter within thirty (30) days after termination of the rental agreement or within fifteen (15) days after receipt of the renter's new mailing address, whichever is later. If there is damage to the residential rental unit, this period shall be extended by thirty (30) days. The renter shall within thirty (30) days of termination of the rental agreement, notify the owner or designated agent of the location where payment and notice may be made or mailed.

(b) After termination of the rental agreement, property or money held and separately identified as a utilities deposit shall be refunded by the owner to the renter within ten (10) days of a satisfactory showing that all utility charges incurred by the renter have been paid. Absent such showing within forty-five (45) days of termination, the owner shall within fifteen (15) days thereafter, apply the utilities deposit to the outstanding utility debt incurred by the renter. Any refund due to the renter shall be paid within seven (7) days after the utility deposit has been applied to the renter's utility debt, or within fifteen (15) days after receipt of the renter's new mailing address, whichever is later.

(c) If the owner of a residential rental unit or his agent unreasonably fails to comply with subsection (a) or (b) of this section, the renter may recover the full deposit and court costs. In an action by a renter pursuant to this section, if the owner is the prevailing party and the court finds the renter acted unreasonably in bringing the action, the owner may be awarded court costs in addition to any other relief available.

1-21-1209. Holder of owner's interest bound by provisions.

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The holder of the interest of the owner or designated agent in the residential rental unit at the time of termination of the rental agreement shall be bound by the provisions of W.S. 1-21-1207 and 1-21-1208.

1-21-1210. Possession of premises and disposition of personal property abandoned by renter after termination of rental agreement.

(a) Upon regaining lawful possession of the rental unit following termination of the rental agreement, the owner may immediately dispose of any trash or property the owner reasonably believes to be hazardous, perishable or valueless and abandoned. Any property remaining within the rental unit after termination of the rental agreement shall be presumed to be both valueless and abandoned. Any valuable property may be removed from the residential rental unit and shall thereafter be disposed of as follows:

(i) The owner shall provide written notice to the renter in accordance with this paragraph, describing the property claimed to be abandoned and stating that the property shall be disposed of after seven (7) days from the date of service of the notice if the renter or his agent does not, within the seven (7) day period, take possession of the property or notify the owner in writing of the renter's intent to take possession of the property. The notice provided by the owner under this paragraph shall be deemed served:

(A) On the date the notice is mailed by certified mail to the renter at an address furnished to the owner by the renter in writing specifically for this purpose;

(B) On the date notice is served on the renter in accordance with Rule 4 of the Wyoming Rules of

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Civil Procedure provided a copy of the written notice is delivered to the individual renter personally; or

(C) On the date the notice is published in a newspaper published in the county or widely circulated in the county where the residential rental unit is located.

(ii) If the owner does not receive a written response from the renter within seven (7) days after service of notice under paragraph (i) of this subsection, the property shall be conclusively deemed abandoned and the owner may retain or dispose of the property;

(iii) If the renter responds in writing to the owner on or before seven (7) days after service of notice under paragraph (i) of this subsection that he intends to take possession of the property, the property shall be held for an additional period of seven (7) days after the written response is received. If the renter fails to take possession of the property within the additional fifteen (15) day period, the property shall be conclusively deemed abandoned and the owner may retain or dispose of the property.

(b) The owner is entitled to payment of storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage. An owner shall be allowed reasonable storage costs if he stores the property himself or actual storage costs if the property is stored commercially. Payment of storage costs shall be made before the renter removes the property.

(c) The owner is not responsible for any loss to the renter resulting from storage.

1-21-1211. Owner's remedies; eviction; judicial remedies; damages.

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(a) If the renter does not vacate the premises as required by a court order issued pursuant to W.S. 1-21-1001 et seq., the sheriff may remove the renter's possessions and prevent the renter from reentering the premises without further action by the court.

(b) If the renter damages the rental property, the owner may apply any property or money held as a deposit to the payment of damages as provided in W.S. 1-21-1208(a) and the renter shall remain liable for any damages beyond the damages paid by the deposit, plus interest at ten percent (10%) per annum on any unpaid amounts. The owner may take any legal action available to recover damages caused to the unit by the renter.

Section 2. W.S. 1-21-1002(a) by creating a new paragraph (vi) and (b) is amended to read:

1-21-1002. When proceedings allowed.

(a) Proceedings for forcible entry and detainer may be had in any of the following cases:

(vi) Against renters in violation of any terms imposed under W.S. 1-21-1204 or 1-21-1205.

(b) This section shall not be construed as limiting the provisions of W.S. 1-21-1101 or 1-21-1201 through 1-21-1210.

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Section 3. This act is effective July 1, 1999.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk

ATTACHMENT B

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-FIRST YEAR
AT SAN FRANCISCO, CALIFORNIA
AUGUST 4 – 11, 1972

WITH AMENDMENTS APPROVED, AUGUST 1974

WITH COMMENTS

Approved by the American Bar Association at its
Midyear Meeting in Houston, Texas, February, 1974

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Residential Landlord and Tenant Act was as follows:

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Copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
Suite 510
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Chicago, Illinois 60611

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

ARTICLE I GENERAL PROVISIONS AND DEFINITIONS

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- 1.104. Construction Against Implicit Repeal
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UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

ARTICLE I GENERAL PROVISIONS AND DEFINITIONS

PART I SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

§ 1.101. [Short Title] This Act shall be known and may be cited as the “Uniform Residential Landlord and Tenant Act.”

Comment

This Act concerns landlord-tenant relationships under rental agreements for residential purposes (Section 1.201). The Act does not apply to rental agreements made for commercial, industrial, agricultural or any purpose other than residential.

§ 1.102. [Purposes; Rules of Construction]

(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this Act are

(1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;

(2) to encourage landlords and tenants to maintain and improve the quality of housing; and

(3) to make uniform the law with respect to the subject of this Act among those states which enact it.

Comment

Existing landlord-tenant law in the United States, save as modified by statute or judicial interpretation, is a product of English common law developed within an agricultural society at a time when doctrines of promissory contract were

unrecognized. Thus, the landlord-tenant relationship was viewed as conveyance of a lease-hold estate and the covenants of the parties generally independent. These doctrines are inappropriate to modern urban conditions and inexpressive of the vital interests of the parties and the public which the law must protect.

This Act recognizes the modern tendency to treat performance of certain obligations of the parties as interdependent.

Liberal construction of this Act and its application for promotion of its underlying purposes and policies will permit development by the courts in light of unforeseen and new circumstances and practices. However, proper construction of the Act requires that its interpretation and application be limited to its reason.

§ 1.103. [Supplementary Principles of Law Applicable] Unless displaced by the provisions of this Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

Comment

This section, adapted from Section 1-103 of the Uniform Commercial Code, indicates the continued applicability to landlord-tenant relations of all supplemental bodies of law except in so far as they are explicitly displaced by this Act. The listing given in this section is merely illustrative; no listing could be exhaustive.

§ 1.104. [Construction Against Implicit Repeal] This Act being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Comment

This section indicates the policy that no Act which bears evidence of carefully considered permanent regulative intention should lightly be regarded as impliedly repealed by subsequent legislation. This Act, carefully integrated and intended as a uniform codification of permanent character covering an entire “field” of law, is to be regarded as particularly resistant to implied repeal.

§ 1.105. [Administration of Remedies; Enforcement]

(a) The remedies provided by this Act shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(b) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Comment

Subsection (a) is intended to negate unduly narrow or technical interpretation of remedial provisions and to make clear that damages must be minimized. The use of the words “aggrieved party” is intended to indicate that in appropriate circumstances rights and remedies may extend to third persons under this Act or supplementary principles of law (compare Article IV, Parts I and II).

Under subsection (b) any right or obligation described in this Act is enforceable by court action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether tort action, specific performance or equitable relief is available is determined not by this section but by specific provisions and supplementary principles (see Section 1.103).

§ 1.106. [Settlement of Disputed Claim or Right] A claim or right arising under this Act or on a rental agreement, if disputed in good faith, may be settled by agreement.

Comment

This section applies to settlements of claims asserted by either landlord or tenant.

Subsequent sections of this Act (a) forbid the tenant from prior waiver of rights (Section 1.403), and (b) subject the bargain of the parties to the test of conscionability (Section 1.303).

PART II
SCOPE AND JURISDICTION

§ 1.201. [Territorial Application] This Act applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

§ 1.202. [Exclusions from Application of Act] Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

(1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel, or motel [or lodgings [subject to cite state transient lodgings or room occupancy excise tax act]];

(5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(7) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

Comment

This Act regulates landlord-tenant relations in residential properties. It is not intended to apply where residence is incidental to another primary purpose such as residence in a prison, a hospital or nursing home, a dormitory owned and operated by a college or school, or residence by a landlord's employee such as a custodian, janitor, guard or caretaker rendering service in or about the demised

premises. This Act is intended to apply to government or public agencies acting as landlords (Section 1.301 (8)).

This Act does not apply to occupancy by a purchaser under a contract of sale. This Act applies to occupancy by the holder of an option to purchase, as distinguished from a contract of sale.

This Act applies to roomers and boarders but is not intended to apply to transient occupancy. In many jurisdictions transient hotel operations are subject to special taxes and regulations and, where available, determinations under such authority constitute appropriate criteria.

All of the exclusions enumerated apply only to genuine, bona fide arrangements not created to avoid the application of the Act and are subject to the test of good faith (see Section 1.302).

[Subsection (3)] A fraternal or social organization is deemed to also cover “athletic club”.

[§ 1.203. [Jurisdiction and Service of Process]

(a) The [] court of this state may exercise jurisdiction over any landlord with respect to any conduct in this state governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the court by the service of process in the manner provided by this section.

(b) If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and filed with the [Secretary of State]. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the [Secretary of State], but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.]

Comment

This section bestows jurisdiction on the courts of the enacting state over landlords who violate the act and provides a method of obtaining personal jurisdiction by service of process. The brackets indicate that the section may be omitted by those states which already have “long-arm” statutes. The rights under this section are additional to those provided in Section 2.102 of this Act.

The words “Secretary of State” are bracketed since in some jurisdictions some other public official may be designated by law as empowered to receive service.

This section as drawn does not provide for substitute service and jurisdiction in an action brought against a tenant. In the view of the Commissioners authorization for such procedure, if deemed appropriate, should be made by general legislation applying to all debtors, naturally including tenants.

PART III GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION: NOTICE

§ 1.301. [General Definitions] Subject to additional definitions contained in subsequent Articles of this Act which apply to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act

(1) “action” includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;

(2) “building and housing codes” include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit;

(3) “dwelling unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by 2 or more persons who maintain a common household;

(4) “good faith” means honesty in fact in the conduct of the transaction concerned;

(5) “landlord” means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by Section 2.102;

(6) “organization” includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, and any other legal or commercial entity;

(7) “owner” means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes a mortgagee in possession;

(8) “person” includes an individual or organization;

(9) “premises” means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(10) “rent” means all payments to be made to or for the benefit of the landlord under the rental agreement;

(11) “rental agreement” means all agreements, written or oral, and valid rules and regulations adopted under Section 3.102 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(12) “roomer” means a person occupying a dwelling unit that does not include a toilet and either a bath tub or a shower and a refrigerator, stove, and kitchen sink, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure;

(13) “single family residence” means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit;

(14) “tenant” means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Comment

[Subsection (2)] Typical of such “building and housing codes” are housing, building, sanitation, electrical, plumbing, fire prevention, safety and security ordinances and regulations. It is intended to include all such codes whether enacted or promulgated under federal, state or local authority.

[Subsection (7)] Accordingly, in the case of an active trust where all the duties and powers of management inure to the trustee and the rights of the beneficiary are limited to the receipt of income from the trust estate and the beneficiary has no right to the present use and enjoyment of the property, the trustee would be considered an owner but the beneficiary would not. In the case of the so-called “naked title” trust encountered in some jurisdictions where the trustee holds legal title but all powers of management and direction are vested in the beneficiary, the trustee, as the holder of legal title, would be considered an owner; the beneficiary, since he has a right under the trust agreement to present use and enjoyment of the property, would also be considered an owner. The same result would be reached if the trust were revocable at the direction of the beneficiary. In the case of property held in the name of a nominee or straw the beneficial owner would be considered an owner.

[Subsection (9)] Agricultural leases are excluded from operation of the Act (Section 1.202(7)). Inclusion of “grounds, areas and facilities held out for the use of tenants” does not alter the exclusion.

[Subsection (11)] “Rental agreement” will thus include the original agreement between landlord and tenant as well as any modification and all valid rules and regulations concerning use and occupancy as provided in Section 3.102.

[Subsection (12)] This Act provides lesser rights to a roomer as distinguished from the tenant of a dwelling unit. The definition requires certain facilities to be provided by the landlord. This requirement is not met by provision of the same by the tenant.

§ 1.302. [Obligation of Good Faith] Every duty under this Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Act imposes an obligation of good faith in its performance or enforcement.

Comment

Section 1.302 is adapted from Section 1-203 of the Uniform Commercial Code. As the commentators there said, “This section sets forth a basic principle running throughout this Act. The principle involved is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties.” The commentators there drew attention to particular applications of this general principle. The intention is that the rule be identical in landlord-tenant relationships and, similarly, particular applications of this general principle appear in specific provisions of this Act such as exclusions (Section 1.202), retaliatory eviction as well as complaints made to public authorities (Section 5.101), and obligation of the landlord to repair (Section 2.104).

§ 1.303. [Unconscionability]

(a) If the court, as a matter of law, finds

(1) a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) a settlement in which a party waives or agrees to forego a claim or right under this Act or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

Comment

This Section, adapted from the Uniform Commercial Code and the Consumer Credit Code, is intended to make it possible for the courts to police explicitly against rental agreements, clauses, settlements, or waivers of claim or right which they find to be unconscionable. This section is intended to allow the courts to pass directly on the issue of unconscionability and to make a conclusion of law as to unconscionability. The basic test is whether, in light of the background and setting of the market, the conditions of the particular parties to the rental

agreement, settlement or waiver of right or claim are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the agreement or settlement. Thus, the particular facts involved in each case are of utmost importance since unconscionability may exist in some situations but not in others. Either landlords or tenants may, in appropriate circumstances, avail themselves of this section.

§ 1.304. [Notice]

(a) A person has notice of a fact if

(1) he has actual knowledge of it,

(2) he has received a notice or notification of it, or

(3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person “knows” or “has knowledge” of a fact if he has actual knowledge of it.

(b) A person “notifies” or “gives” a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person “receives” a notice or notification when

(1) it comes to his attention; or

(2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication; or

(3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

(c) “Notice,” knowledge of a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

Comment

This section is adapted from Section 1-204(25) of the Uniform Commercial Code. Section 1.302 imposes the obligation of good faith and is, of course, applicable to this section.

PART IV GENERAL PROVISIONS

§ 1.401. [Terms and Conditions of Rental Agreement]

(a) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this Act or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(b) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(c) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day-to-day.

(d) Unless the rental agreement fixes a definite term, the tenancy is week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.

Comment

In absence of an agreement for a definite term of lease, the tenant has a term of month-to-month without regard to the payment of rent weekly, monthly or otherwise, and a roomer who pays rent for longer intervals than week-to-week has a month-to-month term. As to termination of such tenancies, see Sections 4.301(a) and 4.301(b).

§ 1.402. [Effect of Unsigned or Undelivered Rental Agreement]

(a) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(b) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year.

Comment

The subsections above apply to transactions in which a written rental agreement has been signed and delivered by either landlord or tenant, the parties have agreed on terms, and the defect is solely the absence of a signature. Delivery thus means legal rather than physical delivery alone. Thus knowledge or notice of the signing of the rental agreement is required. These subsections do not apply to applications for leases or similar writings regarded by the parties as preliminary to written agreements.

§ 1.403. [Prohibited Provisions in Rental Agreements]

(a) A rental agreement may not provide that the tenant:

(1) agrees to waive or forego rights or remedies under this Act;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to pay the landlord's attorney's fees; or

(4) agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing

provisions known by him to be prohibited, the tenant may recover in addition to his actual damages an amount up to [3] months' periodic rent and reasonable attorney's fees.

Comment

Rental agreements are often executed on forms provided by landlords, and some contain adhesion clauses the use of which is prohibited by this section. Section 2.415 of the Uniform Consumer Credit Code provides "a buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease." The official comment to this section states "This section reflects the view of the great majority of states in prohibiting authorization to confess judgment." Similarly, clauses attempting to exculpate the landlord from tort liability for his own wrong have been declared illegal by statutes in some states (compare Mass.G.L. Chapter 186, Sec. 15; New York Real Property Law Section 234; and Ill. Ann. Stat., Chapter 80, Section 15a (Smith-Hurd) 1966). Such provisions, even though unenforceable at law may nevertheless prejudice and injure the rights and interests of the uninformed tenant who may, for example, surrender or waive rights in settlement of an enforceable claim against the landlord for damages arising from the landlord's negligence.

Attorney's fees under the Act may be asserted against either the landlord or tenant as enumerated in the Act (see, for example, Sections 1.403(b); 2.101(c); 4.101(b); 4.105(a)). The right to recover attorney's fees against the tenant, however, must arise under the statute, not by contract of the parties.

§ 1.404. [Separation of Rents and Obligations to Maintain Property Forbidden] A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with Section 2.104(a).

Comment

The obligation of the landlord to maintain fit premises in accordance with Section 2.104(a) and the rights and remedies of the tenant under Articles II and IV cannot be defeated or thwarted by the assignment of rents.

ARTICLE II
LANDLORD OBLIGATIONS

§ 2.101. [Security Deposits; Prepaid Rent]

(a) A landlord may not demand or receive security, however denominated, in an amount or value in excess of [1] month[s] periodic rent.

(b) Upon termination of the tenancy property or money held by the landlord as security may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with Section 3.101 all as itemized by the landlord in a written notice delivered to the tenant together with the amount due [14] days after termination of the tenancy and delivery of possession and demand by the tenant.

(c) If the landlord fails to comply with subsection (b) or if he fails to return any prepaid rent required to be paid to the tenants under this Act the tenant may recover the property and money due him together with damages in an amount equal to [twice] the amount wrongfully withheld and reasonable attorney's fees.

(d) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Act.

(e) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

Comment

Widely varying legislation has been enacted affecting security deposits:

California – Chapter 1317, Acts of 1970, West.Cal.Civ.Code, Sec. 1951.

Colorado – H.B.No.1230, Acts of 1971, Colo.Rev.Stat.Ann., Ch. 58 (Forcible Entry and Detainer), Sec. 1-26-28.

Delaware –H.B. 433, Acts of 1971, Del.Code Ann. (Landlord-Tenant), Title 25, Ch. 51, Sec. 5912.

Florida – Chapter 70-360, Acts of 1970, Fla.Stat.Ann.Civil Practice and Procedure, Ch. 83 (Landlord and Tenant), Sec. 83.261.

Illinois – P.A. 77-705, Sec. 3, Acts of 1971, Ill.Stat.Ann., Ch. 74 (Interest), Sec. 91-93.

Maryland – Chapter 633, Sec. 1 of Acts of 1969, as amended by Chapter 291 of Acts of 1971, Md.Ann.Code, Art. 53 (Landlord and Tenant), Sec. 41-43.

Massachusetts – Chapter 244, Sec. 1 of Acts of 1969, as amended by Chapter 666, Sec. 1 of Acts of 1970, Mass.Gen.Laws Ann., Ch. 186 (Title to Real Property), Sec. 15B.

Minnesota – Chapter 784 of Acts of 1971, Minn.Stat., Ch. 504 (Landlord and Tenant), Sec. 504.19.

New Jersey – S.B. 904, Acts of 1970, N.J.Rev.Stat., Sec. 2A:46-8.

New York – Chapter 680, Sec. 70 of Acts of 1967, as amended, N.Y.Gen.Obligation Laws, Sec. 7-103 and 7-105.

Pennsylvania – Pa.Stat.Ann., Title 68 (Real and Personal Property), Sec. 250.512.

These statutes generally require a landlord to return security deposits to tenants within a specified time period, account for his claim to any part of the security deposit and provide for penalty in the event landlord fails to comply.

Difficulties in administration and accounting of security deposits have led some authorities to advocate their abolition (see Interim Report Landlord and Tenant Law Applicable to Residential Tenancies, Ontario Law Reform Commission [1968] pgs. 21 and 28). The Uniform Act preserves the security deposit but limits the amount and prescribes penalties for its misuse.

This section does not limit the amount of prepaid rent, as distinguished from security.

Subsection (e) of this section resolves a split of authority among the states. See 1 A.L.P. Section 3.73, nn. 9-15. Note that under Section 2.105(a) of the Act the original landlord is bound.

§ 2.102. [Disclosure]

(a) A landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for:

(1) service of process and receiving and receipting for notices and demands; and

(2) performing the obligations of the landlord under this Act and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

Comment

This section requires disclosure to the tenant of names and addresses of persons who (a) have power to negotiate, make repairs, etc., in the operation of the premises; (b) are empowered to receive service of notice and process which binds all of the owners. In the absence of such disclosure the person collecting the rent shall be deemed to have the authority to accept notices and service and to provide for the necessary maintenance and repairs.

The purpose of this section is to enable the tenant to proceed with the appropriate legal proceeding, to know to whom complaints must be addressed and, failing satisfaction, against whom the appropriate legal proceedings may be instituted. Rights under this section are additional to those provided in Section 1.203.

Stat.1972, Chapter 493 inserts into Chapter 143 of Massachusetts General Laws a provision requiring the posting of a nonresident owner's name, address and telephone number as well as the name, address and telephone number of any non-resident manager or agent subject to a fine of not more than \$50.00 for each day of violation. However, this statute does not make available to the tenant the remedies provided in the Uniform Act.

§ 2.103. [Landlord to Deliver Possession of Dwelling Unit] At the commencement of the term a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and Section 2.104. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 4.301(c).

Comment

Thus, the landlord may proceed directly against a squatter. The tenant may also, pursuant to Section 4.102(a), proceed with an action for possession. Where appropriate such actions may be in summary proceedings. It is thus possible that both landlord and tenant may have the right of action against third parties wrongfully in possession of the premises.

§ 2.104. [Landlord to Maintain Premises]

(a) A landlord shall

(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(3) keep all common areas of the premises in a clean and safe condition;

(4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(6) supply running water and reasonable amounts of hot water at all times and reasonable heat [between [October 1] and [May 1]] except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

(b) If the duty imposed by paragraph (1) of subsection (a) is greater than any duty imposed by any other paragraph of that subsection, the landlord's duty shall be determined by reference to paragraph (1) of subsection (a).

(c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

(d) The landlord and tenant of any dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if

(1) the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(2) the work is not necessary to cure noncompliance with subsection (a)(1) of this section; and

(3) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(e) The landlord may not treat performance of the separate agreement described in subsection (d) as a condition to any obligation or performance of any rental agreement.

Comment

[Subsections (a) and (b)] Vital interests of the parties and public under modern urban conditions require the proper maintenance and operation of housing. It is thus necessary that minimum duties of landlords and tenants be set forth. Generally duties of repair and maintenance of the dwelling unit and the premises are imposed upon the landlord by this section. Major repairs, even access, to essential systems outside the dwelling unit are beyond the capacity of the tenant. Conversely, duties of cleanliness and proper use within the dwelling unit are appropriately fixed upon the tenant (see Sections 3.101 and 3.102).

[Entire section] This section follows the warranty of habitability doctrine now recognized in the jurisdictions of

California – *Hinson v. Delis*, 26 C.A.3d 62.

Washington, D.C. – *Javins v. First National Realty*, (U.S.C.A.D.C. 1970) 428 F.2d 1071.

Wisconsin – *Pines v. Perssion*, (1961) 111 N.W.2d 409.

New Jersey – *Resta Realty Corp. v. Cooper*, (1969) 53 N.J. 444.

Illinois – *Jack Springs Inc. v. Little*, (1972) 280 N.E.2d 208.

Hawaii – *Lemler v. Breedin*, (1969) 462 P.2d 470.

Michigan – *Rome v. Walker*, (1972) 196 N.W.2d 850.

New Hampshire – *Kline v. Burns*, (1971) 276 A.2d 248.

Colorado – *Guesenbury v. Patrick*, (March 1972) C.C.H.Pov.L.Rptr. Sec. 15,803.

Georgia – *Gevens v. Gray*, (April 1972) C.C.H.Pov.L.Rptr. Sec. 15,412.

Standards of habitability dealt with in this section are a matter of public police power rather than the contract of the parties or special landlord-tenant legislation. This section establishes minimum duties of landlords consistent with public standards. Generally duties of repair and maintenance of the dwelling unit and the premises are imposed upon the landlord by this section. Major repairs, even access, to essential systems, outside the dwelling unit are beyond the capacity of the tenant. Conversely, duties of cleanliness and proper use within the dwelling unit are appropriately fixed upon the tenant (see Sections 3.101 and 3.102).

Except as specifically provided, these obligations may not be waived (Section 1.403).

§ 2.105. [Limitation of Liability]

(a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the tenant of the conveyance. However, he remains liable to the tenant for all security recoverable by the tenant under Section 2.101 and all prepaid rent.

(b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the tenant of the termination of his management.

Comment

This section relieves a landlord, unless otherwise agreed, from liability under the rental agreement and this Act as to events occurring after a good faith sale and conveyance to a bona fide purchaser and after written notice to the tenant of the conveyance except as to security recoverable under Section 2.101 and all prepaid rent. As between the original landlord and tenant, it is intended that the loss for failure to account for security and prepaid rent if recoverable should fall upon the landlord who, in contrast to the tenant, can take steps to protect the integrity of the security and prepaid rent account at the time of sale. The landlord for the time being is liable for compliance with the rental agreement and this Act. See definition of “landlord” in Section 1.301(5). See also Sections 1.404 and 2.105(a).

ARTICLE III TENANT OBLIGATIONS

§ 3.101. [Tenant to Maintain Dwelling Unit] A tenant shall

- (1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (2) keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
- (3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (4) keep all plumbing fixtures in the dwelling unit or used by the tenant as clear as their condition permits;
- (5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;

(6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so; and

(7) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.

Comment

This section, the converse of Section 2.104, establishes minimum duties of tenants consistent with public standards of health and safety.

§ 3.102. [Rules and Regulations]

(a) A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if

(1) its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) it is reasonably related to the purpose of which it is adopted;

(3) it applies to all tenants in the premises in a fair manner;

(4) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(5) it is not for the purpose of evading the obligations of the landlord;
and

(6) the tenant has notice of it at the time he enters into the rental agreement, or when it is adopted.

(b) If a rule or regulation is adopted after the tenant enters into the rental agreement that works a substantial modification of his bargain it is not valid unless the tenant consents to it in writing.

Comment

Under Section 1.301(11) the rental agreement includes valid rules and regulations.

§ 3.103. [Access]

(a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(b) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least [2] days' notice of his intent to enter and may enter only at reasonable times.

(d) A landlord has no other right of access except

- (1) pursuant to court order;
- (2) as permitted by Sections 4.202 and 4.203(b); or
- (3) unless the tenant has abandoned or surrendered the premises.

Comment

Special remedies to landlord and tenant for abuse of rights of access are provided by Section 4.302. As to wrongful entry to take possession see Sections 4.107 and 4.207.

§ 3.104. [Tenant to Use and Occupy] Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises [in excess of [7] days] no later than the first day of the extended absence.

ARTICLE IV
REMEDIES

PART I
TENANT REMEDIES

§ 4.101. [Noncompliance by the Landlord – In General]

(a) Except as provided in this Act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with Section 2.104 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than [30] days after receipt of the notice if the breach is not remedied in [14] days, and the rental agreement shall terminate as provided in the notice subject to the following:

(1) If the breach is remedial by repairs, the payment of damages or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.

(2) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within [6] months, the tenant may terminate the rental agreement upon at least [14 days'] written notice specifying the breach and the date of termination of the rental agreement.

(3) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

(b) Except as provided in this Act, the tenant may recover actual damages and obtain injunctive relief for noncompliance by the landlord with the rental agreement or Section 2.104. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees.

(c) The remedy provided in subsection (b) is in addition to any right of the tenant arising under Section 4.101(a).

(d) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under Section 2.101 and all prepaid rent.

Comment

Claims arising under this section if disputed in good faith may be settled by agreement (see Section 1.106). However, a prior settlement will not prevent a termination under Section 4.101(a)(2).

The availability of injunctive relief is determined by usual principles of equity. See Section 1.103.

Remedies available to the tenant pursuant to Section 4.101 are not exclusive (see Section 1.103). A duty to mitigate damages exists under Section 1.105. As to rights of third parties, see comment under Section 1.105.

§ 4.102. [Failure to Deliver Possession]

(a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in Section 2.103, rent abates until possession is delivered and the tenant may

(1) terminate the rental agreement upon at least [5] days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security; or

(2) demand performance of the rental agreement by the landlord and, if the tenant elects, obtain possession of the dwelling unit from the landlord or any person wrongfully in possession and recover the actual damages sustained by him.

(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than [3] months' periodic rent or [threefold] the actual damages sustained, whichever is greater, and reasonable attorney's fees.

Comment

"Aggrieved person" includes a landlord entitled to proceed under Sections 2.103 and 4.301(c) as well as a tenant entitled to possession.

Injunctive relief may be available in an appropriate case.

§ 4.103. [Self-Help for Minor Defects]

(a) If the landlord fails to comply with the rental agreement or Section 2.104, and the reasonable cost of compliance is less than [\$100], or an amount equal to [one-half] the periodic rent, whichever amount is greater, the tenant may recover damages for the breach under Section 4.101(b) or may notify the landlord of his intention to correct the condition at the landlord's expense. If the landlord fails to comply within [14] days after being notified by the tenant in writing or as promptly as conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

(b) A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

Comment

The right of self-help may extend to areas outside of the dwelling. See Section 2.104 and the definition of premises in Section 1.301(9).

§ 4.104. [Wrongful Failure to Supply Heat, Water, Hot Water, or Essential Services]

(a) If contrary to the rental agreement or Section 2.104 the landlord willfully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential service, the tenant may give written notice to the landlord specifying the breach and may

(1) take reasonable and appropriate measures to secure reasonable amounts of heat, hot water, running water, electric, gas, and other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or

(2) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(3) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(b) In addition to the remedy provided in paragraph (3) of subsection (a) the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under subsection (a) reasonable attorney's fees.

(c) If the tenant proceeds under this section, he may not proceed under Section 4.101 or Section 4.103 as to that breach.

(d) Rights of the tenant under this section do not arise until he has given notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

Comment

The remedies under Sections 4.107 and 5.101(b) are applicable where the landlord affirmatively acts to interrupt or diminish services, etc., and those remedies are in addition to the remedies provided in Sections 4.101, 4.103 and 4.104.

Section 4.104(a)(1) permits collective action by tenants to secure essential services.

Section 1.302 imposes the obligation of good faith and is, of course, applicable to this section.

§ 4.105. [Landlord's Noncompliance as Defense to Action for Possession or Rent]

(a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may [counterclaim] for any amount he may recover under the rental agreement or this Act. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees.

(b) In an action for rent when the tenant is not in possession, he may [counterclaim] as provided in subsection (a) but is not required to pay any rent into court.

Comment

Article II defines the obligations of the landlord which the tenant may enforce against him (Section 1.105). While *Lindsey v. Normet* (405 U.S. 56) holds no principle of constitutional law requires the admission of the habitability defense in a summary proceeding maintained by the landlord against the tenant, Section 4.105 is consistent with modern procedure reform in permitting the tenant to file a counterclaim or other appropriate pleading in the summary proceeding to the end that all issues between the parties may be disposed of in one proceeding. It is anticipated that upon filing of the counterclaim the court will enter the order deemed appropriate by him concerning the payment of rent in order to protect the interests of the parties. See cases in comment to Section 2.104(e).

§ 4.106. [Fire or Casualty Damage]

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may

(1) immediately vacate the premises and notify the landlord in writing within [14] days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(b) If the rental agreement is terminated the landlord shall return all security recoverable under Section 2.101 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

Comment

Under common law, notwithstanding leased premises were destroyed, the tenant was still under obligation to pay rent. Legislation has been adopted in various states providing that if the premises are so destroyed or injured as to be

untenantable or unfit for occupancy the tenant may quit and surrender possession of the premises:

Arizona Rev.Stat., Sec. 33-343 (1956)

Connecticut Gen.Stat.Ann., Sec. 47-24 (1960)

Michigan Stat.Ann., Sec. 26.1121 (1953)

Minnesota Stat.Ann., Sec. 504.05 (1947)

Mississippi Code Ann., Sec. 898 (1957)

Wisconsin Stat.Ann., 234.17 (1957)

West Virginia in 1931 adopted Section 37-6-28 providing for

“... a reasonable reduction of the rent for such time as may elapse until there be placed again upon the premises buildings, or other structures, of as much value to be tenant for his purposes as those destroyed, ...”

§ 4.107. [Tenant’s Remedies for Landlord’s Unlawful Ouster, Exclusion, or Diminution of Service] If a landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than [3] months’ periodic rent or [threefold] the actual damages sustained by him, whichever is greater, and reasonable attorney’s fees. If the rental agreement is terminated the landlord shall return all security recoverable under Section 2.101 and all prepaid rent.

Comment

This section provides a remedy for the violation of Section 4.207. See also comment to Section 4.104(c).

Injunctive relief may be available in an appropriate case.

PART II
LANDLORD REMEDIES

§ 4.201. [Noncompliance with Rental Agreement; Failure to Pay Rent]

(a) Except as provided in this Act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with Section 3.101 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than [30] days after receipt of the notice. If the breach is not remedied in [14] days, the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within [6] months, the landlord may terminate the rental agreement upon at least [14] days' written notice specifying the breach and the date of termination of the rental agreement.

(b) If rent is unpaid when due and the tenant fails to pay rent within [14] days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(c) Except as provided in this Act, the landlord may recover actual damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or Section 3.101. If the tenant's noncompliance is willful the landlord may recover reasonable attorney's fees.

Comment

Claims arising under this section if disputed in good faith may be settled by agreement (see Section 1.106). However, a prior settlement will not prevent a termination under the last sentence of Section 4.201(a).

The availability of injunctive relief is determined by the usual principles of equity. See Section 1.103.

Remedies available to the landlord pursuant to Section 4.201 are not exclusive (see Section 1.103). A duty to mitigate exists under Section 1.105. As to rights of third parties, see comment under Section 1.105.

§ 4.202. [Failure to Maintain] If there is noncompliance by the tenant with Section 3.101 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within [14] days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date periodic rent is due, or if the rental agreement has terminated, for immediate payment.

Comment

The landlord may proceed under either Section 4.201 or Section 4.202. In event of a recurring breach, he can proceed under either section. He must serve notice in all cases.

§ 4.203. [Remedies for Absence, Nonuse and Abandonment]

(a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence [in excess of [7] days] pursuant to Section 3.104 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

(b) During any absence of the tenant in excess of [7] days, the landlord may enter the dwelling unit at times reasonably necessary.

(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.

§ 4.204. [Waiver of Landlord's Right to Terminate] Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by him that varies from the terms of the rental agreement constitutes a waiver of the landlord's

right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

Comment

If breach of a continuing duty is involved, acceptance of rent or performance will not bar the landlord's remedy for a later breach. Acceptance of unpaid rent paid after expiration of a termination notice does not constitute a waiver of the termination.

§ 4.205. [Landlord Liens; Distress for Rent]

(a) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before the effective date of this Act.

(b) Distraint for rent is abolished.

§ 4.206. [Remedy after Termination] If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in Section 4.201(c).

§ 4.207. [Recovery of Possession Limited] A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this Act.

Comment

See Section 4.107.

PART III
PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS

§ 4.301. [Periodic Tenancy; Holdover Remedies]

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least [10] days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least [60] days before the periodic rental date specified in the notice.

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord may also recover an amount not more than [3] month's periodic rent or [threefold] the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, Section 1.401(d) applies.

Comment

See Section 1.402 as to effect of occupancy under lease signed by only one party and Section 2.103 as to tenant's rights to bring an action for possession against a prior holdover tenant.

§ 4.302. [Landlord and Tenant Remedies for Abuse of Access]

(a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case the landlord may recover actual damages and reasonable attorney's fees.

(b) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages [not less than an amount equal to [1] month's rent] and reasonable attorney's fees.

Comment

See Section 3.103 as to right of access.

ARTICLE V RETALIATORY CONDUCT

§ 5.101. [Retaliatory Conduct Prohibited]

(a) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

(1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or

(2) the tenant has complained to the landlord of a violation under Section 2.104; or

(3) the tenant has organized or become a member of a tenant's union or similar organization.

(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in Section 4.107 and has a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within [1] year before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:

(1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other person on the premises with his consent; or

(2) the tenant is in default in rent; or

(3) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(d) The maintenance of an action under subsection (c) does not release the landlord from liability under Section 4.101(b).

Comment

State and federal courts in California (*Aweeka v. Bonds*, 20 Cal.App.3d 281, 97 Cal.Rptr. 650 [1971]; *Schweiger v. Bonds*, 3 Cal.App.2d 507, 90 Cal.Rptr. 729 [1970]), Florida (*Bowles v. Blue Lake Development Corp.*, [S.Florida, 1971], C.C.H.Pov.L.Rptr. Sec. 12,920), Massachusetts (*McQueen v. Druker*, 317 F.Supp. 1122 [D.Mass.1970]), New Jersey (*Alexander Hamilton Savings and Loan Assn. v. Whalen*, 107 N.J.Super. 89, 257 A.2d 7 [1969]; *Engler v. Capital Management Corp.*, 112 N.J.Super. 445, 271 A.2d 615 [1970]; *E. E. Newman Inc. v. Hallock*, 116 N.J.Super. 220, 281 A.2d 544 [1971]; *Silberg v. Lipscomb*, 117 N.J.Super. 491, 285 A.2d 86 [1971]), New York (*Hosey v. Club Van Courtlandt*, 299 F.Supp. 501 [S.D.N.Y.1969]), Ohio (T.R.O. granted, Case No. 8375 [S.D. Ohio]), Wisconsin (*Dickhut v. Norton*, 45 Wis.2d 309, 173 N.W.2d 297 [1970]) and the District of Columbia (*Edwards v. Habib*, 397 F.2d 687 [D.C.Cir.1968]) have upheld the defense of retaliatory eviction.

A number of states by statute have recognized the defense: Cal.C.C. Sec. 1942.5; Conn.Gen.St. Ann., Sec. 42-540a [Supp.1969]; Del.Ch. 25 Sec. 5917 [Supp.1971]; Ha.Ch. 666 Sec. 43 [Supp.1971]; Ill.Rev.St.Ch. 80, Sec. 71 [Supp.1971]; Me.Rev.St. Tit. 14 Sec. 6001, 6002; Md.Laws Ch. 687 Sec. 9-10 [Supp.1971]; Mass.Comp.Laws Ann., Ch. 186 Sec. 18 [Supp.1970]; Mich.Comp.Laws Ann., Ch. 600, Sec. 5646 [Am'd P.S.1969]; Minn.Stat.Ch. 240 Sec. 566.03 [Supp.1971]; N.J.Stat. Ann. 2A Sec. 42-10.10; N.Y. [McKinney's] Unconsolidated Laws, Tit. 23 Sec. 8590, 8609 [Supp.1971]; Pa.St. Ann.Ch. 35, Sec. 1700-1 (Supp.1971); R.I. Gen.Laws Ann. Sec. 34-20-10 [1968]. The legislatures of Maine, Massachusetts, New Jersey, Michigan, and Rhode Island also protect tenants from eviction if they have organized or become a member of a tenants' union or similar organization.

The question as to whether the landlord is engaging in retaliatory conduct as prohibited by the statute is a question of fact to be determined by the court. In an action by or against the tenant, evidence of a complaint within one year before the alleged act of retaliation creates a rebuttable presumption that the landlord's

conduct was in retaliation. This presumption will not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services.

ARTICLE VI
EFFECTIVE DATE AND REPEALER

§ 6.101. [Effective Date] This Act shall become effective on [.....]. It applies to rental agreements entered into or extended or renewed on and after that date.

Comment

This section, drawn from Section 10-101 of the Uniform Commercial Code, is also drawn with the idea of an effective date considerably in advance so there may be ample time for all of those who may be affected by the provisions of the Act to become familiar with it. It is intended that the Act apply to all leases, renewals, and other events occurring after its effective date.

§ 6.102. [Specific Repealer] The following Acts and parts of Acts are hereby repealed: [List appropriate Acts]

§ 6.103. [Savings Clause] Transactions entered into before the effective date of this Act, and not extended or renewed on and after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this Act as though the repeal or amendment had not occurred.

§ 6.104. [Severability] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.