WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

07 RM 005

Date: **January 8, 2007**

Authors: **Joy N. Hill, Associate Research Analyst**

Re: **Landlord/Tenant Laws**

Request: Identify a range of particularly strong and particularly weak remedies provided within various state landlord-tenant statutes.

Response: A review of statutory landlord-tenant language across various states revealed many similar remedy provisions within the statutory language. LSO Research was unable to identify any states that provided criminal sanctions against landlords or tenants based upon violations of the rental agreement. However, remedies found within statutory language do address rental agreement and landlord tenant statutory violations with actions such as rent abatement, rental agreement termination, and actions brought in court.

FINDINGS IN GENERAL

LSO Research staff's review of *model* legislation language and intent and of landlord-tenant statutes in several states revealed the general tendency to apply contract law to landlord-tenant agreements rather than property law principles. Remedies found within statutory language pertaining to violations of landlord and tenant duties and obligations tend to include notification by one party to the other of the violation and a deadline by which the aggrieved party will take further action. Further action may consist of (on the part of the tenant or landlord):

- ✓ a termination of the rental agreement;
- ✓ rent abatement in the event the violation renders the tenement uninhabitable for the tenant;
- ✓ the tenant making any needed repairs and applying that cost toward the rent payment;
- ✓ seeking redress from the courts; and
- ✓ paying rent to the court (this ensures the rent is still being paid) for distribution based upon findings of the court.

Generally speaking, it appears that other states' statutes direct what course of action a landlord or a tenant may take in certain situations as an aggrieved party. For example, if the water is shut off to the property the tenant is occupying, the tenant may notify the landlord, and if after a reasonable (typically has a timeframe attached to it) amount of time the problem has not been addressed, the tenant may further notify the landlord of intent to terminate the rental agreement. This is just *one* scenario. Other states' timelines and process may vary; however, this is a typical remedy provided for in the majority of the statutes reviewed. In addition, several statutes provide that an aggrieved party may seek redress through the courts for actual damages in some circumstances, although damages for emotional and mental distress or anguish are not included. Some of the statutes reviewed allow tenants, if a landlord is unresponsive to notification of a needed repair, to make the repairs themselves and deduct the repair amount from their rent. Again, this is just *one* scenario. According to National Conference of State Legislatures (NCSL) these remedies, and those provided in the attached synopsis, appear to be typical provisions within states' landlord-tenant statues overall, although some states do

not even have codified landlord-tenant laws.

Although Wyoming has not adopted model legislation (discussed below) on this issue, the following remedies are provided for pursuant to the "Residential Rental Property Act", W.S. 1-21-1201 through 1211 (Attachment A), and appear to be based upon contract law rather than property law:

- ✓ after three notifications (written notice by renter, official notification served upon landlord by certified mail, notification of time elapsed and conditions not corrected) if conditions are still not corrected by the landlord, the tenant my seek redress in the courts;
- ✓ if successful at court, tenant may be awarded costs, damages and affirmative relief (may include termination of the rental agreement or order directing landlord to make repairs);
- ✓ if the court terminates the rental agreement, the tenant is refunded the balance of the rent and deposit paid;
- ✓ if a landlord does not return a tenant's deposit within a reasonable time prescribed by statute (or provide written explanation of any amount withheld) the tenant may recover full deposit and court costs;
- ✓ a landlord may apply any property or money held as a deposit to any damages caused by the tenant (the tenant remains liable for any damages beyond the amount of the deposit, plus interest at 10 percent on any unpaid amounts); and
- ✓ if a tenant does not vacate the premises required by a court order, the sheriff may remove the tenant's possessions and prevent the tenant from reentering the premises.

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT OF 1972

In 1972, the National Conference of Commissioners on Uniform State Laws (NCCUSL) produced a piece of model legislation known as the Uniform Residential Landlord and Tenant Act (Attachment B). According to NCCUSL, the purpose of creating this act was to "…remove the landlord and tenant relationship from the constraints of property law and establish it on the basis of contract with all concomitant rights and remedies." LSO Research identified, within the landlord-tenant statues of North Carolina, language that speaks to this paradigm shift in that it prescribes a Class 1 misdemeanor conviction for tenants who willfully or unlawfully destroy or significantly damage a landlord's property, including the property the tenant is occupying. As of the date of this memorandum, North Carolina has not adopted the Uniform Residential Landlord and Tenant Act. However, 21 states have adopted this model legislation, including the following western and neighboring states: Arizona, Montana, Nebraska, and New Mexico. Other states that have adopted the act are:

Alabama	Alaska	Connecticut	Florida
Hawaii	Iowa	Kansas	Kentucky
Michigan	Mississippi	Oklahoma	Oregon
Rhode Island	South Carolina	Tennessee	Virginia
Washington			

A significant outcome of the model legislation is the relative consistency of remedies available to landlords and tenants within the model language and its application in statute.

REMEDIES PROVIDED BY STATUTE BY SELECT OTHER STATES

LSO Research staff identified several remedial measures for both tenants and landlords within several western states, including Wyoming's neighboring states. A synopsis of remedies provided by states that have not adopted the Uniform Residential Landlord and Tenant Act is provided as Attachment C. According to two

articles published in the Land and Water Law Review, (one article[1] published in 1998, the other article[2] in 2000) many states appear to be crafting landlord-tenant laws with the intention of moving away from caveat emptor ("buyer beware") and implementing the concept of implied warranty of habitability, which basically operates from the paradigm that a landlord must provide a tenement that is habitable for the tenant. According to NCSL, this includes:

- ✓ running hot and cold water;
- ✓ heat (where necessary) and cooling (where necessary);
- ✓ maintenance of all common areas in a safe and clean condition;
- ✓ maintenance of electrical, plumbing, sanitary, and ventilating systems;
- ✓ providing trash receptacles and trash removal;
- ✓ smoke detectors (many states also require carbon monoxide detectors).

When applicable, the following may be considered as well, although this is not an exhaustive list:

- ✓ storm windows or shutters in areas with severe winters;
- ✓ waterproofing in wet or rainy areas; and
- ✓ extermination services in areas prone to insect infestation.

These requirements tend to be reflected in the language of URLTA, and many of the statutes of states that have not adopted URLTA, particularly in language that discusses essential services, condition of the property, needed repairs, and delivery of possession issues.

CONCLUSION

Basically, the remedies for rental agreement violations appear to be fairly consistent across the states, and certainly those states that have adopted URLTA. It could be argued that remedies including court action are likely to be viewed as containing strong language, at least when considering the potential outcome of a court action. Therefore, Idaho could be viewed as having rather strong language in that remedies rely heavily on actions in court. Colorado, however, may be considered to be fairly light with regard to landlord-tenant statutory language. Even though slight statutory language differences exist among the western region state's landlord-tenant statutes most of the remedies appear to be fairly consistent. In addition, as stated above, NCSL was unable to identify states that had drastically different language than that identified in Attachment B.

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

[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).