RENT WITHHOLDING

General Assembly of the Commonwealth of Pennsylvania

JOINT STATE GOVERNMENT COMMISSION / FEBRUARY 1978

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Harrisburg, Pennsylvania

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SUMMARY OF RECOMMENDATIONS

The Joint State Government Commission Task Force on Rent Withholding recommends that Pennsylvania rent withholding law should not be further amended until the enactment of a comprehensive statewide landlord-tenant code revising current landlord-tenant law.[1]

The task force recommends for inclusion in a landlord-tenant code a model rent withholding section which would:

1. Extend rent withholding option to tenants residing in boroughs, incorporated towns and townships consenting by ordinance to undertake a housing code enforcement program.
2. Extend the prohibition against retaliatory evictions.
3. Allow a tenant to pay utility bills owed by the landlord and deduct the amount from the rent required to be escrowed.

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1. 1977 Senate Bill 944, Printer's No. 1046, proposes such a revision. The provision relating to rent withholding, contained in proposed Section 605, differs from the model rent withholding provision recommended in this report. Also see 1977 House Bill 1335, Printer's No. 1572, which sets forth yet another rent withholding provision.

4. Allow a municipality's code enforcement program, in cases where the landlord is unable or unwilling to repair a dwelling to meet minimal code standards, to use escrowed funds to make repairs to the dwelling. Otherwise the escrowed funds should be paid to the municipality for use only in its code enforcement program.

5. Statutorily authorize the due process hearing--prior to certification of uninhabitability--that is required by the Constitution as applied by the Pennsylvania courts.

INTRODUCTION

The findings and recommendations of the Joint State Government Commission Task Force on Rent Withholding result from an evaluation of the effectiveness of the act of January 24, 1966, P.L. (1965) 1534, No. 536, entitled, as amended, "An act providing for the suspension of the duty to pay rent for dwellings certified to be unfit for human habitation in cities and providing for the withholding and disposition of shelter allowances." The statute was intended by the General Assembly to provide an incentive for city landlords to repair deficient dwellings.

With Representative Charles Laughlin as chairman and Senator Herbert Arlene as vice chairman, the Task Force on Rent Withholding organized in July 1975 pursuant to 1973 House Resolution 16, Printer's No. 120. During the course of study, the task force reviewed experience under the rent withholding law, held public hearings in Pittsburgh and Philadelphia, met with local code enforcement administrators and evaluated responses to a questionnaire sent to all 51 cities in Pennsylvania.

In addition, the rent withholding statute was evaluated in relationship to Pennsylvania landlord-tenant law, last compiled in the act of April 6, 1951, P.L. 69, No. 20,[2] and the changes in the law's approach to the landlord-tenant relationship since that enactment. Also reviewed was experience under the Improvement of Deteriorating Real Property or Areas Tax Exemption Act, act of July 9, 1971, P.L. 206, No. 34.

The task force concluded its work by incorporating its recommendations into a model statutory rent withholding provision intended for future legislative consideration in connection with a comprehensive revision of landlord-tenant law. This statute is presented at page 31.

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2. See Joint State Government Commission, Proposed Landlord and Tenant Act of 1951 (1950).

THE STATUTE

Pennsylvania rent withholding law, act of January 24, 1966, P.L. (1965) 1534, No. 536,[3] provides:

> Notwithstanding any other provision of law, or of any agreement, whether oral or in writing, whenever the Department of Licenses and Inspections of any city of the first class, or the Department of Public Safety of any city of the second class, second class A, or third class as the case may be, or any Public Health Department of any such city, or of the county in which such city is located, certifies a dwelling as unfit for human habitation, the duty of any tenant of such dwelling to pay, and the right of the landlord to collect rent shall be suspended without affecting any other terms or conditions of the landlord-tenant relationship, until the dwelling is certified as fit for human habitation or until the tenancy is terminated for any reason other than nonpayment of rent. During any period when the duty to pay rent is suspended, and the tenant continues to occupy the dwelling, the rent withheld shall be deposited by the tenant in an escrow account in a bank or trust company approved by the city or county as the case may be and shall be paid to the landlord when the dwelling is certified as fit for human habitation at any time within six months from the date on which the dwelling was certified as unfit for human habitation. If, at the end of six months after the certification of a dwelling as unfit for human habitation, such dwelling has not been certified as fit for human habitation, any moneys deposited in escrow on account of continued occupancy shall be payable to the depositor, except that any funds deposited in escrow may be used, for the purpose of making such dwelling fit for human habitation and

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3. As amended August 11, 1967, P.L. 204, No. 68 and June 11, 1968, P.L. 159, No. 89.

for the payment of utility services for which the landlord is obligated but which he refuses or is unable to pay. No tenant shall be evicted for any reason whatsoever while rent is deposited in escrow.

Summary of Provisions

1. The act applies to Philadelphia, Pittsburgh, Scranton and all 48 third-class cities.[4]

2. The act only applies after the residence has been certified as uninhabitable by (a) in the case of Philadelphia, the Bureau of License and Inspection; (b) in the case of Pittsburgh, the Department of Public Safety; and (c) in the third-class cities, the city public health department or the county public health department.

3. The act only affects the right to demand and collect rent; no other landlord-tenant relationships are affected.

4. While the duty to pay rent to the landlord is suspended by operation of the statute, the tenant still must pay the rent to the escrow account in a bank or trust company approved by the public agency.

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4. Third-class cities in Pennsylvania are as follows:

1. Allentown	13. Corry	25. Lancaster	37. Pittston
2. Altoona	14. DuBois	26. Lebanon	38. Pottsville
3. Arnold	15. Duquesne	27. Lock Haven	39. Reading
4. Beaver Falls	16. Easton	28. Lower Burrell	40. Shamokin
5. Bethlehem	17. Erie	29. McKeesport	41. Sharon
6. Bradford	18. Farrell	30. Meadville	42. Sunbury
7. Butler	19. Franklin	31. Monessen	43. Titusville
8. Carbondale	20. Greensburg	32. Monongahela	44. Uniontown
9. Chester	21. Harrisburg	33. Nanticoke	45. Washington
10. Clairton	22. Hazleton	34. New Castle	46. Wilkes-Barre
11. Coatesville	23. Jeannette	35. New Kensington	47. Williamsport
12. Connellsville	24. Johnstown	36. Oil City	48. York

5. If the dwelling is recertified as habitable within six months after the initial certification of unfitness for habitation, the landlord receives the money that has accrued in the escrow account.

6. If, after six months, the dwelling still remains unfit for human habitation, the tenant depositor recoups his rental payments from the escrow account.

7. Deposited escrow funds may be used by the landlord for repair purposes.

8. No evictions may occur while the tenant is depositing rent in the escrow account.

Legislative History

The original rent withholding law, act of January 24, 1966, P.L. (1965) 1534, No. 536, set the time limit to effect repairs at one year and did not provide for the use of the escrow funds for repair or utility payments. The act of August 11, 1967, P.L. 204, No. 68, amended the original act to allow the use of escrow funds for repair and utility payments and reduced the time limit allowed for repairs to six months. The 1967 amendment also provided that a tenant may not be evicted "for any reason whatsoever" while rent is deposited in escrow. The act of June 11, 1968, P.L. 159, No. 89, included third-class cities within the aegis of the statute and provided for city or county approval of banks to hold the escrow account.

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Judicial Interpretation

The constitutionality of the rent withholding law has been affirmed: DePaul v. Kauffman, 441 Pa. 386, 272 A.2d 500 (1971).

However, before certification of uninhabitability and the withholding of rent, the landlord is entitled to a hearing. A determination that a dwelling is unfit for human habitation raises a substantial risk of an erroneous deprivation of property. In order to provide due process guarantees of the United States Constitution, an opportunity for the landlord to be heard is required: Manna v. City of Erie, 27 Pa. Commonwealth Ct. 396, 366 A.2d 615 (1976). A specially appointed hearing examiners' review of the certification of uninhabitablity with a right to appeal de novo to the common pleas trial court has been held to provide due process for the landlord: Davis v. Allegheny County Health Department, 16 Pa. Commonwealth Ct. 13, 328 A.2d 589 (1974).

The six-month escrow provision of the act has been held to mean "as many periods as necessary": Klein v. Allegheny County Health Department, 441 Pa. 1, 7, 269 A.2d 647, 651 (1970). In Klein the court averred that the true intent of the Legislature in enacting the rent withholding law was to increase the incentive of the landlord to repair the sub-standard dwelling; a single six-month period would not effectuate this intent because the landlord would have little incentive to make repairs that would cost more than six months' rent.

A landlord who expends money to make the dwelling fit for human habitation but does not bring the dwelling up to minimum standards is not entitled to receive the escrow payments. Thus, the landlord is not allowed to recover for mere partial repairs or repairs made to the limit of the escrow fund if these repairs are inadequate: National Council of the Junior Order of United American Mechanics v. Allegheny County Health Department, 216 Pa. Superior Ct. 37, 261 A.2d 616 (1969). The burden on the landlord of losing out-of-pocket funds until the repairs are completed has been held to be not oppressive: DePaul v. Kauffman, supra.

A two-part county health department system that sets stricter standards for reinspection of a property by requiring all violations of major public health significance

to be repaired has been upheld: Miller v. Allegheny County Health Department, 379 A.2d 1351 (Pa. Commonwealth Ct., 1977).

If the tenant interferes with any repairs being made, the six-month period is tolled for the duration of the interference. The rights and obligations of the parties are not extinguished by the tolling: Wilson v. Philadelphia Board of License & Inspection Review, 16 Pa. Commonwealth Ct. 586, 329 A.2d 908 (1974).

If the landlord is erroneously informed by the local department of health that the dwelling unit has been re-certified as fit for habitation and subsequently the dwelling is recertified as unfit, the statute is tolled from the time of the erroneous notice that the dwelling is fit until the recertification of uninhabitability: Palmer v. Allegheny County Health Department, 21 Pa. Commonwealth Ct. 246, 345 A.2d 317 (1975).

Application of the Law

Questionnaire--The Commission prepared and distributed a rent withholding questionnaire to administrators in the 51 Pennsylvania cities. Twenty-six cities replied, 15 designating that they use rent withholding in some form.

The responding cities where rent withholding is presently utilized are

1. Philadelphia
2. Pittsburgh
3. Allentown
4. Bradford
5. Chester
6. Duquesne
7. Erie
8. Farrell
9. Harrisburg
10. Lancaster
11. Lebanon
12. Meadville
13. Oil City
14. Reading
15. York

The responding cities where the rent withholding remedy is not presently in use are

1. Altoona
2. Beaver Falls
3. Butler
4. Carbondale
5. Clairton
6. Connellsville
7. Jeannette
8. Lock Haven
9. Monongahela
10. Pittston
11. Titusville

Of the cities that use rent withholding, three noted the failure of this remedy to combat their problems: Philadelphia, Oil City and Bradford reported intransigence on the landlord's behalf when repair is to be made. Other reporting cities generally expressed satisfaction with the law.

Pittsburgh and most of the smaller cities report that rent withholding produces a willingness on the part of landlords to repair rather than allow their properties to remain unproductive or forego the property at a tax sale. Most tenants seem to understand their substantive rights under the rent withholding law.

The 11 responding cities that do not use rent withholding offered many reasons for nonapplication of the law.

Some note little or no problem with absentee landlords or other property owners who would let their properties fall into disrepair. Others rely on local ordinances that provide "alternate" remedies. (These "alternate" remedies were not explained in the questionnaires but presumably could include fines and penalties for code violations.) Cities that have actually considered and rejected rent withholding usually referred to the lack of a substantial landlord-tenant problem requiring such a complex remedy as rent withholding.

Questionnaires distributed to the cities also included an inquiry as to the use of the Improvement of Deteriorating Real Property or Areas Tax Exemption Act, the act of July 9, 1971, P.L. 206, No. 34. This act authorizes tax incentives for landlords who improve their dwellings which have been certified as unfit for human habitation. This is an optional plan that leaves the improved value of real property untaxed for the first year after the improvement and for subsequent years taxes only a percentage of the actual value of the improvement. Only York, Pittsburgh and Philadelphia reported that they have implemented the act and they have done so only on an extremely limited bases. It is, therefore, currently impossible to gauge the effect of the act on the rehabilitation of substandard housing.

The Pennsylvania General Assembly has extended the scope of the act by providing certain real property tax

exemptions for improvements to deteriorating areas by the construction of new dwelling units. The impact upon municipalities of this legislative change cannot be ascertained at this time.[5]

Public Hearings and Meetings with Code Administrators--Public hearings were held by the task force in April of 1976 for the purpose of receiving testimony from those having practical experience with the rent withholding law. Representatives of tenant and landlord organizations testified in Philadelphia and Pittsburgh, commenting upon the present status of the law and suggesting amendatory legislation. In addition, the task force met with local code administrators from Philadelphia, Harrisburg and Erie to obtain their assessment of the statute. The testimony and comments are summarized below.[6]

A code administrator from Philadelphia reported widespread difficulties with the law, noting that much of Philadelphia's housing stock is infirm--past the point where any statute encouraging repair would be useful. Absentee landlords who are not present to effect repair present a major problem.

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5. Act of August 5, 1977, P.L. ____, No. 42.
6. For the names and organizations of individuals who testified or presented written comments, see Appendix, p. 35.

The procedures of the Philadelphia code administrator include annual inspection of multiple-family dwellings, inspection when a complaint is made (whether or not rent withholding is initiated), notice to both owner and tenant that a building has been declared unfit, recertification of a building as fit after repair and demolition of property in some instances.

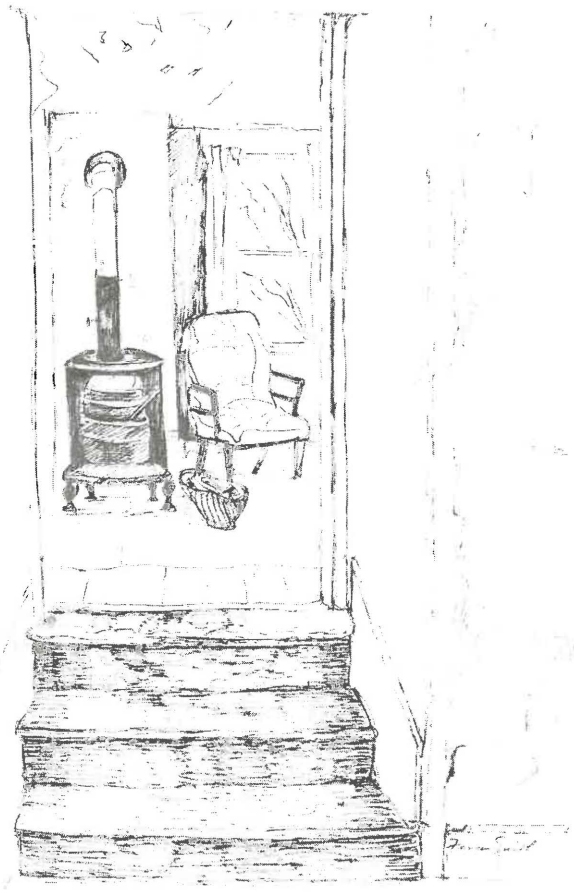
A representative of the Northwest Tenants Organization of Philadelphia expressed dissatisfaction with city officials in having a basic disposition toward refusal to certify housing as uninhabitable and in being phlegmatic in enforcement of the law. On the other hand, a representative of the Philadelphia Apartment Owners' Association complained that current standards on uninhabitability are too loose, claiming that under current regulations mere cosmetic problems of a building could initiate a certification of uninhabitability.

A Harrisburg code administrator noted mixed success with rent withholding. Escrow rents are used to pay oil and heating bills and perform essential repairs.

The Erie rent withholding administrator reported great satisfaction with the fairness and effectiveness of the law in dealing with both landlords and tenants. Erie permits the payment of utility bills if the landlord will not or cannot pay. The city will not perform any repairs. All the violations of a premises that has been declared unfit for

human habitation and subsequently vacated must be corrected before rehabitation is permitted.

The representative of the Allegheny County Health Department noted a steadily increasing willingness of landlords to repair after rents have been withheld. Representatives of the Pittsburgh Institute of Real Estate Management expressed general satisfaction with the results of the rent withholding program and cited the fair administration by the county health department as the key to this success. An attorney representing landlord interests said that the maintenance of Pittsburgh's extensive stock of old housing is effectively handled by rent withholding.



Proposed Amendments to Rent Withholding Law

Individuals testifying at the hearings voiced the need for rent withholding in rural areas as well as urban and requested that the statute be extended to boroughs, townships and incorporated towns. In Indiana County, for example, dwellings with no plumbing or centralized heating facilities are rented and landlords refuse to make repairs.

As a result of this proposal, the Task Force on Rent Withholding has recommended that the rent withholding act be extended to include boroughs, incorporated towns and townships that consent by ordinance. (See Recommendation No. 1, page 1, and the model rent withholding provision, page 31.)

Concern was also voiced that the threat of retaliatory eviction by the landlord once rent withholding has run its course deters any positive action by the tenant to correct his burdensome situation.[7] Although Philadelphia does have a

7. 1976 House Bill 1570, Printer's No. 3426, dealing with the retaliatory eviction problem, passed the House, but was not reported out of Senate committee. 1977 Senate Bill 944, Printer's No. 1046, contains a provision prohibiting retaliatory eviction when the rent withholding provisions are utilized. Also see 1977 House Bill 1335, Printer's No. 1572, for a similar provision.

local ordinance prohibiting retaliatory eviction by a landlord that could be adopted by other participating cities, the task force decided that a uniform statutory approach is the preferable solution. (See Recommendation No. 2 and the model provision.)

The task force also concurred with the proposal that escrowed money should be earmarked for repair payments to the extent that the escrowed funds can pay for the entire cost of needed repairs. (See Recommendation No. 4 and the model provision.)

Two suggested proposals not adopted by the task force called for: (1) the issuance of an occupancy permit to the tenant before possession of a dwelling in order to gauge tenant inflicted damage; and (2) a uniform statewide definition of uninhabitability. The task force considered the former proposal too time-consuming and the latter impractical. The task force noted the success of the Harrisburg occupancy permit ordinance which other municipalities may wish to implement as part of their overall housing code enforcement.

The task force rejected a proposal by the representatives of home builders' and apartment owners' associations that the rent withholding law be repealed. These associations recommended that rather than being economically penalized, landlords should be encouraged not to let their housing become substandard. It was submitted that since

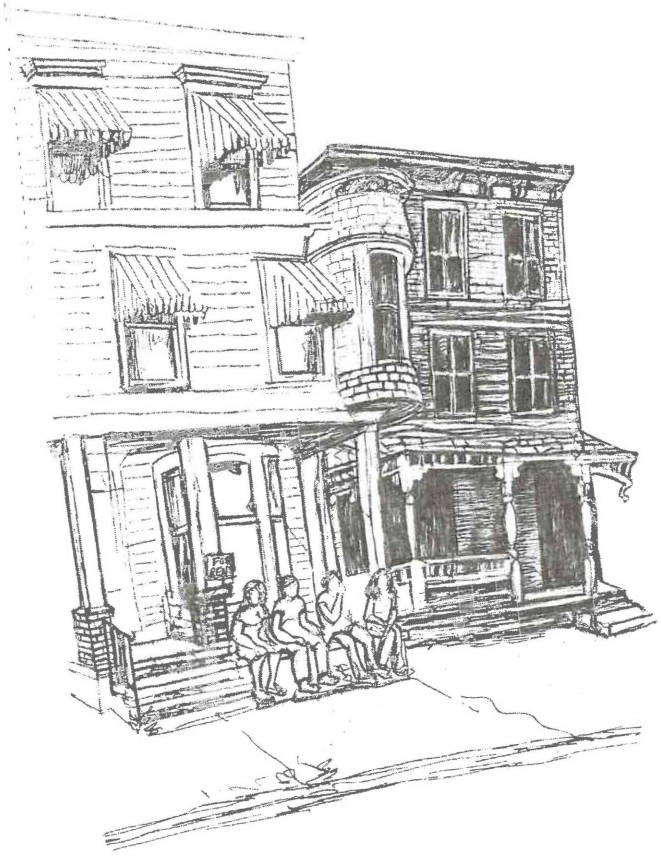
40-60 percent of many landlords' income covers debt service, to withhold one month's rent would place many landlords in default.

Other Proposed Changes

A number of those testifying considered rent withholding to be only one of many possible tenant remedies and proposed that rent withholding be included in a comprehensive landlord-tenant act rather than piecemeal legislation as is currently the case. The task force supports this viewpoint. (See page 1.)

Also advocated was expanded use of the Improvement of Deteriorating Real Property or Areas Tax Exemption Act with waiver of the limit on the amount of funds used to rehabilitate property and establishment of a system of low-cost loans for rehabilitation.

Other alternate tenant remedies brought before the task force include rent abatement and repair-and-deduct programs. For a discussion of these in other states, see infra.



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Rent Withholding/Rent Abatement

Other jurisdictions having promulgated rent withholding statutes include: Massachusetts (Mass. Ann. Laws., ch. 239, §8A); New York (N.Y. Mult. Dwell. §302); New Jersey (N.J. Stat. Ann. 2A. §42-85 et seq.); and Michigan (Mich. Comp. Laws §125.530).

Rent withholding, a statutory remedy, is to be contrasted with its judicially authorized counterpart, rent abatement. Under rent withholding, the tenant initiates the action, but some form of municipal intervention is called for under every rent withholding statute. Rent abatement, on the other hand, also is tenant-initiated but requires no municipal declaration or intervention. Rent abatement is presently used by tenants in the District of Columbia. See Brown v. Southall Realty Co., 237 A.2d 834 (D.C. 1968); Javins v. First National Realty Co., 428 F.2d 1071 (D.C. Cir. 1970), cert. denied, 400 U.S. 925 (1970).

Each rent withholding statute requires a municipal determination of uninhabitability. Rent abatement only

requires that a tenant determine for himself that the property is substandard.

No jurisdiction offers a statutory definition of the term "uninhabitability." In some jurisdictions, local building and health codes attempt to supply such criteria, which include "conditions that endanger health or safety." For authorization of such local ordinances, see Mass. Ann. Laws., ch. 239, §8A.

A judicial interpretation of the meaning of the term "bare living requirements" has been made in New Jersey. Academy Spires, Inc. v. Brown, 111 N.J. Super. 477, 268 A.2d 556 (1970). The Academy Spires court held that "bare living requirements" include heat, hot water, garbage disposal and, where applicable, elevator service.

Payment of rent into court is a common feature. Mass. Ann. Laws., ch. 239, §8A. In Massachusetts, the tenant may collect damages after depositing his rent into court. These damages are computed by subtracting the actual value of the rental dwelling from the contracted value in the original lease: Boston Housing Authority v. Hemingway, 293 N.E.2d 831 (1973).

In New York, payment of rent into court is a prerequisite to the issuance of a court order which stays any subsequent proceeding brought by the landlord for nonpayment of rent. The statute thus operates as a defense for the tenant.

N.Y. Real Prop. Acts. §755. The landlord has six months to repair deficient premises after notification of such infirmities. During this six-month period, rent may be paid into court. If the landlord fails to repair within the allotted six-month period, no further rent accrues.

The District of Columbia has judicially recognized an implied warranty of habitability that comes with every rental dwelling. Javins v. First National Realty Co., 428 F.2d 1071 (D.C. Cir. 1970), cert. denied, 400 U.S. 925 (1970). The tenant may point to this implied warranty of habitability when he opts to withhold his rent. This theory of implied warranty of habitability has been recognized in Pennsylvania by a lower court, but has not been tested at the appellate level. See Derr v. Cangemi, 66 D.&C.2d 162 (Phila. Co., 1974).

The District of Columbia also recognizes the rent abatement defense of illegal contract. If the landlord enters into the lease knowing the property to be substandard, the contract is held to be illegal and the tenant may then rescind the lease. Brown v. Southall Realty Co., 237 A.2d 834 (D.C. 1968). The landlord cannot evict for nonpayment of rent because no rent is due--there is no lease. The illegal contract remedy is inapplicable, however, if the infirmities arise during the period of occupancy. Brown v. Southall Realty Co., supra.

As previously stated, rent withholding statutes always include some form of municipal intervention. Municipalities have addressed the problem of dilapidated housing via the use of criminal sanctions, licensing and orders to vacate and demolish. See Daniels, "Judicial and Legislative Remedies for Substandard Housing: Landlord-Tenant Reform in the District of Columbia," 59 Geo. L.J. 909, 914 (1971).

Criminal sanctions normally are not imposed until all other civil appeals with regard to uninhabitability are exhausted. During the long period of civil litigation, the property remains unrepaired. Even if a criminal conviction is attained, and few are, effectuation of repair is not realized. See Daniels, supra. Since licensing also ultimately ends in criminal sanction, its shortcomings are much the same as those for the criminal penalty.

Orders to vacate and demolish result in the building being razed, but they do not provide alternative housing for the displaced residents. No guarantee as to suitable alternative housing exists.

None of these remedies place immediate pressure on the landlord to repair. Their utility in effectuating repair is minimized because of the delay factor involved.

Rigorous local code enforcement is utilized by some municipalities to encourage repair of infirm property. However, identical housing criteria are used for both

existing and newly constructed properties. Landlords with small holdings suffer greatly by stringent enforcement of these codes. Expenses increase faster than rents can be raised. Landlords must continually repair to comply with these stringent codes yet they cannot raise rent concomitantly with this vigorous repair, and profits are reduced if not altogether eliminated. If the landlord cannot absorb repair costs he may be driven from the market. Robinson v. Diamond Housing Corp., 463 F.2d 853 (D.C. Cir. 1972).

The use of rent withholding often results in retaliatory eviction by the landlord. Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016 (1969), is the leading case banning retaliatory eviction by the landlord whose property has been adjudicated as uninhabitable owing to the tenant's initiative. One court has extended the protection against retaliatory eviction on constitutional grounds. Hosey v. Club Van Cortlandt, 299 F. Supp. 501 (S.D.N.Y. 1969). Hosey noted that retaliatory eviction would be "judicial enforcement of private discrimination; it would require the application of a rule of law that would penalize a person for the exercise of his constitutional rights" (at 506).

New Jersey authorizes civil penalties for attempted retaliatory evictions. N.J. Rev. Stat. §2A:42-10.10. A presumption of retaliation arises if an eviction proceeding is initiated after the tenant presents his grievance to housing officials or takes other protective action. N.J.

Rev. Stat. §2A:42-10.12. Also see Mass. Gen. Laws., ch. 186, §18.

Receiverships

Receiverships exist in a few states: N.Y. Mult. Dwell. §309; Ill. Ann. Stat. ch. 24, §11-31-2; Conn. Gen. Stat. Ann. §19-347b.

The New York receivership statute is a municipality-controlled remedy rather than a tenant-controlled remedy. The tenant is required to petition the court but, if his dwelling is adjudicated as substandard, the municipality takes over and administers the remedy. In New York, the receiver is appointed by the court and given full control over the building in question. The Department of Buildings certifies the units as a nuisance to health, safety or public welfare. Duties of a court-appointed receiver include the removal of the nuisance, collection of rents and the application of those rents toward repair, and the upkeep of the property. If income generated from rents is insufficient to repair, a loan may be obtained from a central pool of rents and the city will acquire a lien against the property. The landlord then pays all expenditures not paid or reimbursed by the rents that were placed in escrow. Any liens against the property must be satisfied. An accounting in court will discharge the receiver.

In Illinois, private individuals act as the receiver and no escrow pool is formed. The cost of repair is covered by interest-bearing notes. Ill. Stat. Ann. ch. 24, §11-31-2.

In the District of Columbia, the district makes the repairs and the cost is assessed as a tax upon the property. D.C. Code §5-313.

Repair-and-Deduct Statutes

Repair-and-deduct statutes exist in many states. Owing to their basic nature--i.e., the use of rental monies to repair infirmities--this remedy is necessarily a limited one. The landlord's failure or refusal to repair initiates the tenant's right to repair and deduct. See La. Civ. Code Ann. art. 2694; Mont. Rev. Codes Ann. §42-202; N.D. Cent. Code §47-16-13; S.D. Compiled Laws Ann. §43-32-9; Okla. Stat. Ann. tit. 41, §32.

Most states place a monetary limit upon the deductible amount. If large-scale repairs are needed, repair cannot be effectuated. "The limited nature of repair-and-deduct statutes militates to prove that they are not designed as an exclusive rent withholding remedy." Green v. Superior Court, 111 Cal. Rptr. 704, 517 P.2d 1168 (1974).

National Proposals

Model Residential Landlord-Tenant Code[8]--Under the model act, a rent withholding remedy is combined with receivership. The receivership is tenant-initiated. However, if future profits will not cover the cost of repair, the receiver may be discharged and the rental agreement terminated.

Under §2-207(i)(a)(b) of the model act, the tenant is permitted to withhold one-fourth of his rent accruing during any period the landlord fails to provide heat, water or hot water.

Uniform Residential Landlord and Tenant Act[9]--The uniform act, approved by the National Conference of Commissioners on Uniform State Laws, 1972, is another national proposal that contains five separate remedies for breach of habitability, four of which have been judicially recognized.

Recission of the lease would be allowed a tenant under §4.101(a) of the act, permitting the tenant to rescind if the landlord does not provide basic living requirements. This is an extension of the Brown v. Southall Realty Co. doctrine of illegal contract, but is based instead upon an implied warranty of habitability. See page 23, supra.

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8. American Bar Foundation, Model Residential Landlord-Tenant Code (1969).

9. The Uniform Residential Landlord and Tenant Act has been adopted in 11 states: Alaska, Arizona, Florida, Hawaii, Kansas, Kentucky, Nebraska, New Mexico, Oregon, Tennessee and Virginia.

Damages are another remedy offered by the uniform act. §4.101(b). A tenant may consider as damages the difference in value between that contracted for in the lease and that actually received. See Mease v. Fox, 200 N.W.2d 791 (Iowa, 1972). Boston Housing Authority v. Hemingway, 293 N.E.2d 831 (Mass., 1973).

The repair-and-deduct statutory remedy discussed herein at page 27, also is offered as an alternative by the uniform act. §4.103(a). The repair-and-deduct remedy has been judicially recognized: Berzito v. Gambino, 63 N.J. 460, 308 A.2d 17 (1973). Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970). The tenant must notify the landlord of any defects. If repair is not forthcoming, the tenant may procure the needed services and deduct their costs from the rent. §4.104(a)(1).

The uniform act also includes a provision that would encourage rent withholding. §4.105. See DePaul v. Kauffman, 441 Pa. 386, 272 A.2d 500 (1971). Boston Housing Authority v. Hemingway, supra.

Finally, the uniform act also permits the tenant to seek a court order for injunctive relief to require the landlord repair his premises. §4.101(b). No jurisdiction has yet to endorse this remedy.

In cases where needed services are not provided, i.e., "heat, running water, hot water, electric, gas and other

essential service," the tenant may recover damages based upon diminution in fair rental value of the premises or, alternatively, may procure housing at the landlord's expense during the period of noncompliance. §4.104(a)(2)(3). If the latter alternative is chosen, the tenant is excused from paying rent during the period of landlord noncompliance. This differs from the usual rent withholding practice which only suspends the direction of funds to the landlord until compliance with housing regulations. Under the uniform act, the landlord-tenant relationship ceases to exist with regard to the payment of rent until the needed services are provided.

MODEL RENT WITHHOLDING PROVISION*

Section ____. Dwellings unfit for human habitation.--

(a) Rent withholding.--Notwithstanding any other provision of law, or of any agreement, whether oral or in writing, whenever the Department of Licenses and Inspections of any city of the first class, or the Department of Public Safety of any city of the second class, second class A, or third class as the case may be, or any Public Health Department of any [such] city, borough, township or incorporated town, or of the county in which such city, borough, township or incorporated town is located, pursuant to a housing code enforcement program ordinance certifies a dwelling as unfit for human habitation, the duty of any tenant of such dwelling to pay, and the right of the landlord to collect rent shall be suspended without affecting any other terms or conditions of the landlord-tenant relationship, until the dwelling is certified as fit for human habitation or until the tenancy

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*Deletions in the language of existing law are enclosed in brackets; additions are underscored.

is terminated for any reason other than nonpayment of rent. No dwelling shall be certified as unfit for human habitation without a hearing with notice and a right to be heard given to the landlord at least five days prior thereto. Either the landlord or the tenant may appeal the decision to the court of common pleas. During any period when the duty to pay rent is suspended, and the tenant continues to occupy the dwelling, the rent withheld shall be deposited by the tenant in an escrow account in a bank or trust company approved by the [city or county as the case may be] municipality and shall be paid to the landlord when the dwelling is certified as fit for human habitation at any time within six months from the date on which the dwelling was certified as unfit for human habitation.

(b) Utility services.--During the time the dwelling is certified as unfit for human habitation, the tenant may pay for utility services for which the landlord is obligated but which he refuses or is unable to pay, and deduct that amount from the rent to be escrowed.

(c) Escrowed funds.--If, at the end of six months after the certification of a dwelling as unfit for human habitation, such dwelling has not been certified as fit for human habitation, any moneys deposited in escrow on account of continued occupancy shall be [payable to the depositor, except that any funds deposited in escrow may be used, for

the purpose of making such dwelling fit for human habitation and] used for the payment of utility services for which the landlord is obligated but which he refuses or is unable to pay and, if sufficient moneys are escrowed, for the purpose of making repairs to such dwelling to render it fit for human habitation. Otherwise any moneys deposited in escrow on account of continued occupancy shall be payable to the municipality for use exclusively in its housing code enforcement program.

(d) Retaliatory evictions prohibited.--No tenant shall be evicted for any reason whatsoever while rent is deposited in escrow. Furthermore, no tenant shall be evicted in retaliation for exercising rights provided by this act. Retaliation shall be presumed whenever the landlord institutes eviction proceedings on the basis of breaches of the lease known to the landlord for a reasonable time prior to the date upon which the tenant exercised his rights under this act.

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APPENDIX

INDIVIDUALS WHO TESTIFIED OR PROVIDED WRITTEN STATEMENTS

Public Hearing, Philadelphia, April 2, 1976

ANNETTE ALTSCHULER, Homeowners Association of Philadelphia

STEVEN BOSCH, Esquire, Community Legal Services, Inc., Philadelphia

WILLIAM L. BOTTS, III, Esquire, Central Pennsylvania Legal Services

SYDNEY CHIPIN, President, Home Builders' Association of Philadelphia and Suburban Counties

SHIRLEY DENNIS, Managing Director, Housing Association of Delaware Valley

JEROME FEINBERG, Esquire, Philadelphia (specialist in landlord-tenant cases)

ROGER FRIEDMAN, Chairman, Apartment Council, Home Builders' Association of Philadelphia and Suburban Counties; also Pennsylvania Builders Association

ROBERT GUZZARDI, Secretary, Philadelphia Apartment Owners' Association, Inc.

HERMAN IDLER, President, Institute of Real Estate Management (Philadelphia Chapter)

STANLEY LASSOFF, Vice President, Homeowners Association of Philadelphia

MARGARET LENZI, Tenant Action Group (TAG), Philadelphia

ANTHONY LEWIS, President, Pennsylvania Housing Improvements & Codes Association

HARRY MADWAY, Executive Vice President, Delaware Valley Apartment Owners' Association, Inc.

I. MARVIN MILLER, Chairman, Legislative Committee, Philadelphia Board of Realtors and Cochairman, Legislative Committee, The Pennsylvania Association of Realtors

PATRICIA ORMES, Director, Housing Information Center, Philadelphia Urban League

STUART S. SACKS, Esquire, State Tenants Organization of Pennsylvania

TIMOTHY SULLIVAN, Esquire, Delaware County Legal Assistance Association, Inc.

RUDOLPH TOLBERT, Executive Director, Northwest Tenants Organization, Inc., Philadelphia

Public Hearing, Pittsburgh, April 9, 1976

VINCENT AMORE, President, Apartment Association of Metropolitan Pittsburgh

STUART A. ARNHEIM, President, Greater Pittsburgh Board of Realtors

JEROME BASKIN, President, Institute of Real Estate Management (Western Pennsylvania Chapter)

WILLIAM BENNIX, Representing interested landlords, Allegheny County

ROBERT G. BONNET, Indiana County

DANIEL B. DIXON, Esquire, Allegheny County Lawyer-Realtor Committee of the Greater Pittsburgh Board of Realtors and Allegheny County Bar Association

CHERYL FORKL, Indiana County

WAYNE GERHOLD, Esquire, Allegheny County Health Department

IRENE HAMMOND, President, Indiana County Tenants Organization

ROBERT E. JOHNSTON, Executive Director, Apartment Association of Metropolitan Pittsburgh

MARY ANN MIKOLAY, Housing Coordinator, Indiana County Community Action Group

ALAN S. PENKOWER, Esquire, Housing Court Magistrate for the City of Pittsburgh

PAUL H. RITTLE, SR., Member, Greater Pittsburgh Board of Realtors

FLORENCE SHEAFFER, Kovalchick Tenant Organization of Indiana County

PRESTON SMITH, Metropolitan Tenant's Organization of Pittsburgh and Allegheny County

BARBARA TOWNLEY, Indiana County

R. STANTON WETTICK, JR., Esquire, Executive Director, Neighborhood Legal Services Association, Pittsburgh

BEVERLY M. WILEY

DON W. WOODWORTH, Indiana County

J. STEVEN XANTHOPOULOS, Esquire, Legal Services for Northwestern Pennsylvania, Erie

Local Government Representatives

PETER ALDERISIO, Code Enforcement, Altoona

LOY APPLEMAN, Code Enforcement, Altoona

JOHN P. CAMPBELL, Code Administrator III, Philadelphia

NICHOLAS J. GAZZANO, Code Administrator, York

DALE HOSTRUP, Code Administrator, Harrisburg

GEORGE J. KWIATKOWSKI, Rent Withholding Administrator, Erie

KENNETH R. POINTS, Code Enforcement, Altoona

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