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## Recent Legislation

### CONSTITUTIONAL LAW — WITHHOLDING WELFARE TENANTS' RENTS FROM LANDLORDS

A recent New York state statute, effective July 1, 1962, supplies a potent new weapon to be used against unconscionable slum landlords who, by failing to repair their properties, yearly sap millions of dollars from public treasuries and continually deny destitute tenants minimum housing standards. The statute contains three principal operative provisions. It (1) establishes the authority of the Welfare Department to pay a welfare recipient's rent directly to the landlord; (2) empowers welfare officers to withhold such rent if conditions "dangerous, hazardous, or detrimental to life or health"<sup>1</sup> exist in a welfare tenant's building; and, most significantly, (3) provides that the showing of existing violations relating to such deplorable conditions constitutes a valid defense in a landlord's action against a tenant for nonpayment of rent.<sup>2</sup>

The statute is specifically designed to end exploitation of welfare tenants and stop state subsidization of slumlords.<sup>3</sup> The common law offers no solution for achieving the same results. In the absence of statutes to the contrary,<sup>4</sup> the ancient doctrine of *caveat emptor* applies since a landlord does not impliedly warrant that rented premises are inhabitable.<sup>5</sup> Nor is a landlord under a duty to repair or maintain his property unless he specifically covenants to do so.<sup>6</sup> Even if there is a covenant to repair, the tenant cannot refuse to pay rent due to intolerable conditions unless he is constructively evicted and necessarily vacates the premises.<sup>7</sup>

Legislative action prescribing the use of police power in statutes such as the one here considered is the only solution to the common-law dilemma of the slum tenant. There is, however, a major roadblock to full enforcement of the statute: Is the act constitutional? Several con-

1. N.Y. SOC. WELFARE LAW § 143-b(2).

2. N.Y. SOC. WELFARE LAW § 143-b(1)(2)(5).

3. N.Y. Sess. Laws 1954, ch. 997, § 1.

4. E.g., CAL. CIV. CODE § 1941; GA. CODE ANN. § 61-111 (1937); LA. CIV. CODE ANN. 2693 (West. 1952).

5. *Faber v. Creswick*, 31 N.J. 234, 156 A.2d 252 (1959); *Pines v. Persson*, 14 Wis. 2d 590, 111 N.W.2d 409 (1961). An exception is made when a furnished house is involved. 1 AMERICAN LAW OF PROPERTY § 3.45 at 268 (Casner ed. 1952).

6. *Chambers v. Lowe*, 117 Conn. 624, 169 Atl. 912 (1933); *Conradi v. Arnold*, 34 Wash. 2d 730, 209 P.2d 491 (1949).

7. *Leader v. Cooper*, 21 Ill. App. 2d 577, 159 N.E.2d 42 (1959); *Stone v. Sullivan*, 300 Mass. 450, 15 N.E.2d 476 (1938). This rule is an enlightened relaxation of the harsh common-law rule under which a tenant was absolutely liable for rent even though the building was totally destroyed. Lesar, *Landlord and Tenant Reform*, 35 N.Y.U.L. REV. 1279, 1283-84 (1960).

stitutional issues are raised, the most obvious of which involve the following provision of the fourteenth amendment:

nor shall any State deprive any person of . . . property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>8</sup>

The validity of the instant statute was recently adjudicated, and it was held to be constitutional.<sup>9</sup> The action was brought by a landlord against a tenant whose rent had been withheld by the Welfare Department due to existing violations in the building. In disposing of the "due process" and "equal protection" arguments, the judge declared that (1) the statute was merely an extension of New York's emergency rent legislation which already had been declared constitutional; that (2) since legislation reducing rent where there is a reduction in service is constitutional, and building violations constitute a reduction in services, the instant statute is valid; and that (3) since equal protection permits a wide range of classifications, this legislation, on behalf of welfare tenants specifically, is not a denial of equal protection.<sup>10</sup>

Although the judge considered the foregoing points in upholding the statute, a reading of the opinion clearly reveals that the basic determining factor was the judge's belief that the statute involves a reasonable use of police power for the protection of public health, safety, morals, and the general welfare. Throughout the opinion, he continuously makes reference to the sorry plight of the welfare tenant. His decision was obviously highly influenced by the fact that the statute was

enacted to cure the cancer of subsidization of ruthless slumlords through the taxpayer's purse. [C]learly a most legitimate public object . . . [A]n additional remedy which the legislature has deemed necessary to protect the rights of tenants who are welfare recipients . . . [A] proper exercise of police power.<sup>11</sup>

The reasoning expressed above is not unlike that advanced in sustaining the constitutionality of other analogous statutes.<sup>12</sup> Housing codes have received nearly unanimous constitutional backing as representing a reasonable exercise of police power for the protection of the public

8. U.S. CONST. amend. XIV, § 1.

9. *Schaeffer v. Montes*, 233 N.Y.S.2d 444 (Civ. Ct. 1962).

10. *Ibid.*

11. *Id.* at 448, 449, 452. It should be noted that the action was dismissed in accordance with § 6 of the statute, "without prejudice to the landlord instituting a new proceeding after he has complied with the law." *Id.* at 452. This section adds to the argument against a violation of due process.

12. There is generally a presumption of constitutionality when measures involving the use of police power to promote the general welfare are litigated. Unconstitutionality is found only when an abuse of power is proven beyond a reasonable doubt. *Noble State Bank v. Haskell*, 219 U.S. 104 (1910); *Bacon v. Walker*, 204 U.S. 311 (1907); *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683 (1955).

welfare.<sup>13</sup> Enactment of reasonable housing regulations is not a denial of due process, but is a valid legislative function even though financial loss to owners may result.<sup>14</sup> To meet the equal protection objection, housing codes must also have reasonable classifications.<sup>15</sup> The validity of zoning ordinances<sup>16</sup> and urban renewal legislation<sup>17</sup> has been sustained in similar terms.

It must be remembered in applying these standards of constitutionality that while each case "must be adjudged in the light of its own facts,"<sup>18</sup>

it is not the hardship of the individual case that determines the question, but rather the general scope and effect of the legislation as an exercise of the police power in protecting health and promoting the welfare of the community at large.<sup>19</sup>

One can argue by analogy that since the instant statute itself complies with these same constitutional tests, it is as constitutional as the legislative acts discussed above.

The New York statute should be widely copied in other jurisdictions.<sup>20</sup> Only where legislatures furnish adequate tools for control of landlords will slum conditions subside. In contrast to other enforcement techniques,<sup>21</sup> the statute under consideration strikes on behalf of the tenant himself to cut off directly the slumlord's revenues. Seldom before has an express remedy been given to the tenant, who is affected most by abominable slum conditions.<sup>22</sup>

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13. "[R]esearch has disclosed no case invalidating a housing code provision on due process grounds." Note, *Municipal Housing Codes*, 69 HARV. L. REV. 1115, 1119 (1956).

14. In *Tenement House Dep't v. Moesch*, 179 N.Y. 325, 72 N.E. 231 (1904), *aff'd without opinion*, 203 U.S. 583 (1906), the court held that such injuries are *damnum absque injuria*.

15. *State ex. rel. Ford Hopkins Co. v. Mayor & Common Council*, 226 Wis. 215, 276 N.W. 311 (1937).

16. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (police power); *Spector v. Building Inspector*, 250 Mass. 63, 145 N.E. 265 (1924) (classification).

17. *Berman v. Parker*, 348 U.S. 26 (1954).

18. *Marblehead Land Co. v. City of Los Angeles*, 47 F.2d 528, 536 (9th Cir. 1931) (dissenting opinion).

19. *Tenement House Dep't v. Moesch*, 179 N.Y. 325, 330, 72 N.E. 231, 232 (1904), *aff'd without opinion*, 203 U.S. 583 (1906).

20. In the various states, such an act could encounter other constitutional barriers including: (1) attack on the ground it involves an unlawful delegation of legislative authority because of a lack of precise and definite standards; (2) challenge as impairing the obligations to contracts or mortgages; and (3) opposition as authorizing unlawful searches and seizures in the inspection of dwellings for building violations. See Guandola, *Housing Codes in Urban Renewal*, 25 GEO. WASH. L. REV. 1, 28-35 (1956). The statute, however, should surmount these difficulties as have most analogous legislative acts.

21. *Id.* at 3 (discusses other enforcement techniques).

22. Lesar, *Landlord and Tenant Reform*, 35 N.Y.U.L. REV. 1279, 1286 (1960).

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