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COMMENT

PROPOSED STATUTORY ALTERATIONS OF THE LANDLORD-TENANT RELATIONSHIP FOR THE STATE OF ILLINOIS

ROBERT J. MORAN*

INTRODUCTION

ACCORDING to an article appearing in a Chicago newspaper,¹ the Urban Research Corporation cited 89 cases of tenants' rights activity reported in newspapers and journals in the first eight months of 1969. Fifty-six percent of such activity took place among people living in low income private housing; 26 percent among people living in middle and upper income groups; and the remaining 18 percent among people living in public housing. The grievances listed were: poor maintenance, 64 percent of the cases; rent, 34 percent; lack of tenant control, 18 percent; and inadequate security, 11 percent.

Although this is certainly not an exhaustive inquiry into tenant rights activity, it does tend to show that such activity is becoming more frequent and it affords us with at least a rudimentary breakdown of the problem areas. From this breakdown we can see that disillusionment with the landlord-tenant relationship is not confined to merely the poor (who comprise 74 percent of the total) but also to middle and upper income earners (who comprise 26 percent). We might note that whereas the latter class has the law of the market place to their advantage when seeking to lease housing, coupled with the fact that they are more likely to own their own property than is the low income earner, this latter cited percentage is formidable.

Poor maintenance is by far the most often mentioned grievance. Poor maintenance, while it affects the low income earner the most,

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1. Chicago Tribune, Nov. 2, 1969, § 3A, at 1, col. 1.

is certainly not limited to this class. It is the problem most in need of solving, for it has repercussions which extend to the health of the community. Low grade housing also affects the morale of the urban poor and has bred a cynicism for society's legal systems.² The economics of their situation forces the poor into housing which is likely to be in a state of disrepair approaching uninhabitability, and the laws governing the leasing of property give them little more of a remedy than to seek other, often unavailable, housing of the same character.

Thus, the scope of this inquiry has been narrowed into the area of the landlord-tenant relationship, specifically: the origins of the relationship, and what can be done to enhance the maintenance of property within a modern rental agreement. These relationships will be investigated with an eye toward a statutory redistribution of rights and duties more in keeping with today's society.

HISTORY OF LANDLORD-TENANT RELATIONSHIP

According to Moynihan, the term for years was originally a device used to circumvent the thirteenth century church's usury prohibition.³ The borrower would give land to a lender for the lender's use and would receive cash in return. The lender could then use the land for his own purpose, keeping whatever profits he could obtain therefrom. Hence, the lender's recovery could well exceed the boundaries of usury and the borrower could obtain ready cash in exchange for an excess of land. This grew to be regarded as a nonfreehold estate, easily contrasted with the freehold estates whose duration was not contingent upon an obligation to be performed by the grantee.

With the rise of the agricultural lease of the fourteenth century, the relationship began to take on a form similar to today's. The real value of the land passed from landlord to tenant was in the value of the crops which could be raised, or the livestock that could be grazed thereon. The owner of this limited term was primarily interested in his ability to make a living from the land, and an improvement upon the land which could give him shelter was of secondary importance.

2. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT, 91-92, 138-39, 257-63 (G.P.O. ea. 1968).

3. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY 63 (1965).

Even the initial concept of waste was tied into this paramount consideration of productivity. The tenant who built a huge improvement upon the land would indeed be guilty of waste, for his dwelling place would stand at the expense of tillable soil.

Since the tenant was not "renting" a shelter *per se*, the adequacy of the shelter lay with the tenant. He could put it into a habitable condition if he so wished or else let it remain in the condition in which he found it. The one thing he could not do was destroy it, for this too would be waste and he would forfeit his right to possession. Of course, the agrarian tenant had shown a keen ability to master the task of keeping or repairing his dwelling, but today that ability has diminished in proportion to the number of tenants who seek shelter, rather than income, from the nonfreehold. As the multi-dwelling unit increased, fewer and fewer residents were capable of performing even minor repairs to heating units or plumbing fixtures, and yet the law imposed no duty upon the landlord to repair.

That the society of today is far from agrarian cannot be denied. Of all housing units occupied in the state of Illinois in 1960, farm units accounted for 162,730 out of 3,275,799 total units, or only 4.9 percent.⁴ In 1950, this was 212,039 out of 2,582,000 (8.2 percent); and in 1940, the comparison was 249,261 out of 2,192,724 (11.4 percent).⁵ However, if we look at the number of rural units rented in 1960, we find only 56,956 as opposed to 124,865 rented in 1940, while the total number of urban units rented rose from 1,059,988 in 1940 to 1,143,322 in 1960.⁶ It should also be noted that of the total urban units rented in 1960, 173,732 (15.2 percent) were considered as deteriorating, and 42,446 (3.7 percent) were labeled dilapidated.⁷ Thus, within a twenty-year period it can be seen that the total number of urban dwelling units is increasing while the total number of rural farm units is decreasing, and that as the number of rented urban units increases, the number of rented rural farm units decreases. If this type of change is taking place well into the

4. 1960—CENSUS OF HOUSING (Eighteenth Decennial Census of U.S.) Vol. 1, States and Small Areas, Part 3, 15-7, table 2 (G.P.O. ed. 1963).

5. 1950—CENSUS OF HOUSING (Seventeenth Decennial Census of U.S.) Vol. 1, General Characteristics, Part 3, 13-8, table 2 (G.P.O. ed. 1953).

6. 1960—CENSUS OF HOUSING, *supra* note 4; 1950—CENSUS OF HOUSING, *supra* note 5.

7. 1960—CENSUS OF HOUSING, *supra* note 4.

third century of industrialization, it is not difficult to imagine how much more drastic was the change within the context of centuries rather than decades. The main point is this: If the landlord-tenant relationship is in fact founded upon principles evolved within the agrarian lease agreement, much of the law today is an anachronism which must be changed. This will be made more clear in the following discussion of the earmarks of the landlord-tenant relationship, past to present.

THE LANDLORD-TENANT RELATIONSHIP

In a recent American Bar Foundation publication,⁸ four doctrines are mentioned which have their roots in the historical agrarian complexion of tenancies, and which are, by today's standards, defunct. These are: the doctrine of waste; the doctrine of caveat emptor; the doctrine of independent covenants; and the lack of a contractual obligation placed upon a party to mitigate damages upon breach. We will consider these in order.

THE DOCTRINE OF WASTE

The idea of waste, as mentioned above, arose as a prohibition of any act which would render the leased property less capable of productivity. Although originally an agriculturally-oriented doctrine, it adhered to the law of leaseholds when agrarian usage became the minority rationale for renting. It is most reasonable and valid today to the extent that waste committed by a tenant through overt action does in fact lead to deterioration in the productivity of a landlord's investment and thus causes him to realize a loss. The corollary of this proposition was stated by an Illinois court in 1894: "Permissive waste consists in the mere neglect or omission to do what will prevent injury, as to suffer a house to go to decay for want of repairs."⁹

It is the doctrine of permissive waste which presents problems in analysis. It appears that such a doctrine is predicated upon two assumptions: first, that there is no economic duty upon a lessor to add enough capital to his investment to cause the premises to remain in a state of repair commensurate with the income received from such

8. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft (1960).

9. Consolidated Coal Co. v. Savitz 57 Ill. App. 659, 663 (1894).

premises; second, that the tenant will have the degree of expertise necessary to make repairs in prevention of permissive waste, and that, barring such an expertise, he should contribute beyond the rent which constitutes the landlord's income to the capital of the landlord by paying for such repairs.

The first point is moot, and whether one should be required to contribute enough from income to offset natural deterioration of capital is an economic rather than a legal consideration. The second point, however, is more cogent. The "jack-of-all-trades," while deserving of his comfortable place in American folklore, is scarcely present in today's urban setting. In fact, the motivating sociological force behind urbanization is a continuous fractioning of employment through increased specialization. Rather than becoming *less* sophisticated in *many* areas, urban man has become *more* sophisticated in *fewer* areas. Besides changing light bulbs, and applying an occasional twist to a screw driver, most repairs necessary to offset permissive waste are personally beyond him—which leads us back to our first point: Should the tenant have to contribute from his own pocket to the capital of the landlord beyond the income already paid to the landlord as rent, and short of compensation for damage directly caused by him?

Perhaps the best answer should be couched in terms of society's interest in offsetting the decay of residential property. It is not too much to ask that a portion of profit be used to prevent decay. When a neighborhood becomes a slum, the whole economy is adversely affected. This is not to imply that a panacea for urban blight would be merely to impose a duty upon landlords to keep property from its natural course of deterioration. At the very least, however, it is a step in the right direction. The doctrine of permissive waste could be circumvented by imposing a duty on the tenant not to commit wilful waste, and a duty on the landlord to make such repairs as are necessary to keep the premises from *naturally* falling into a state of disrepair.

THE DOCTRINE OF CAVEAT EMPTOR

Translated literally, this means "let the buyer beware," and applied to the landlord-tenant relationship, it means that the landlord is not

responsible to the tenant for harm which befalls him as a result of defects existing upon the premises when let. As an historical matter, the doctrine arose in an era when the leasing of real property was in its infancy and enough property was available so that a potential lessee could select the best plot possible. There was an assumption here, and it proposed that the potential tenant was capable of making a reasonable inspection of the premise so as to ascertain whether a present defect would diminish productivity of the land, and further, that if such a defect was found, the potential tenant could seek land elsewhere. This latter fact is important. Caveat emptor is symbolic of the whole adversary texture of the common law; *i.e.* a man should not complain if his eye is not as keen as the next. Further, each party must be in an authentic bargaining position, so that if a party takes land which is defective, he cannot claim coercion. Thus it is fitting that the exceptions to the doctrine carved by the common law applied to latent defects known to the landlord but not the tenant, or instances of outright fraud.¹⁰ These latter acts of landlords are in direct derogation of the "fair play" concept which underlies much of adversary jurisprudence.

For the upper and middle income renter, caveat emptor still makes some sense, for he has the bargaining power necessary to give the doctrine its original vitality. If he finds the premises below a reasonable state of repair, he can ask to have them repaired as a condition to signing the lease or move on until he finds a landlord capable of giving him what he expects. The lower income or poor renter, on the other hand, is not always capable of seeking out better housing, for socio-economic pressures sharply curtail the breadth of his market. A man asked to choose between three inferior dwellings will choose the best, albeit an inferior dwelling. When the market too strongly favors the landlord, the concept of bargain disappears, and caveat emptor becomes the tool of an unbalanced system rather than the balancer as intended.

There has been some attempt at modification of the doctrine of caveat emptor as applied to furnished units. The earliest case was

10. Illinois holds that the landlord is not responsible for defects in the premises at time of letting unless they are latent and the landlord has been guilty of deceit or fraud. *Ciskoski v. Michalsen*, 19 Ill. App. 2d 327 (1958). Caveat emptor applies to lease contract, *Park v. Penn*, 203 Ill. App. 188 (1916).

Smith v. Marrable,¹¹ decided in England in 1843. This case saw an implied covenant wherein furnished premises let would be fit for the purpose intended. The doctrine was accepted by Massachusetts in the case of *Ingalls v. Hobbs*,¹² but sharply limited to the factual situation present in *Smith*.¹³ Illinois made reference to the doctrine in the case of *White v. Walker*,¹⁴ but limited it to a situation where a roomer in a boarding house was allowed to quit the premises when it became untenable due to some act of the lessor without the fault of the lessee. But a later case explicitly established that the full import of the *Smith* doctrine is not applicable within the state of Illinois.¹⁵

One other case which merits some attention was recently decided in the District of Columbia. The court in *Brown v. Southhall Realty Co.*¹⁶ held that a lease was void as against public policy when made for premises upon which, with the landlord's knowledge at the time of leasing, violations of the housing code existed and had been so identified by municipal inspectors.

This is a modification in search of a solution: although a tenant will not be bound by a void lease, that tenant must still find another place to live. Whether this really solves the fundamental problem is debatable. In the normal leasing of residential property in Illinois, the doctrine of caveat emptor still has much life.

THE DOCTRINE OF INDEPENDENT COVENANTS IN A LEASE

The heart of the landlord-tenant relationship lies in the fact that the landlord is conveying an estate in land (as measured in duration), and the tenant, in his obligation to pay rent, is giving consideration for this estate by installments. Any other contractual provisions are tangential to this central conveyance. As a result, the only violations by the landlord which will relieve the tenant of his duty to pay rent

11. Meeson & Welsby 5, 152 Eng. Rep. 693 (Ex. 1843).

12. 156 Mass. 348, 31 N.E. 572 (1892).

13. Stevens v. Pierce, 151 Mass. 207, 23 N.E. 1006 (1890); Bertie v. Flagg, 161 Mass. 504, 37 N.E. 572 (1894); Roth v. Adams, 185 Mass. 341, 70 N.E. 445 (1904).

14. 31 Ill. 422 (1863).

15. Rubens v. Hill, 115 Ill. App. 565, 575 (1904).

16. 237 A.2d 834 (D.C. 1968), cert. denied, 393 U.S. 1018 (1969).

are actual or constructive eviction of the tenant by the landlord or his agent,¹⁷ or some act of the landlord or his agent which will prevent the tenant from peaceful or quiet enjoyment of the demised premises.¹⁸ These violations go to the heart of the common law agreement.

However, if a tenant expressly contracts to make payment of rent subject to the condition precedent of the landlord's covenant to repair, a mutuality of sorts will arise.¹⁹ This is without effect, for the great majority of tenants lack a bargaining position strong enough to condition payment of rent upon the landlord's performance.

One commentator feels that this lack of mutuality and dependence of covenants in real estate law stems from the fact that the rules of property were formulated long before the commercial contract in an awakened commercial atmosphere.²⁰ If this is true, we can appreciate how archaic this doctrine is, for the landlord-tenant relationship of today is basically commercial in nature and thus should benefit from the legal reasoning which evolved in an enlightened commercial setting.

THE LACK OF A CONTRACTUAL OBLIGATION ON THE PART OF A PARTY TO MITIGATE DAMAGES UPON A BREACH

Under general contractual principles, the object of the duty to mitigate damages is to obviate compensation by defendant for losses which the plaintiff might reasonably have avoided.²¹ When a tenant abandons the demised premises (and thus breaches the contract), the landlord is under no duty to seek out a new tenant; he can merely let the premises lie idle and collect rent from the abandoning tenant.²² This stems, in part, from a fear that the landlord, in re-letting, might effect an acceptance of the surrender, and all liability of the original tenant for rent would thereafter cease.²³ This fear could

17. *Wright v. Lattin*, 38 Ill. 293 (1865).

18. *Automobile Supply Co. v. Scene-in-Action Corp.*, 340 Ill. 196, 172 N.E. 35 (1930).

19. *White v. Young Mens Christian Association of Chicago*, 233 Ill. 526, 84 N.E. 658 (1908).

20. WILLISTON, *CONTRACTS* 890 (Rev. ed. 1936).

21. CORBIN, *CONTRACTS* 1039 (1964).

22. *Setz v. Stafford*, 284 Ill. 610 (1918); *accord*, 126 A.L.R. 1224 (1940).

23. *See* TIFFANY, *REAL PROPERTY* at 902, 962 (3d ed. 1939).

be abated if the courts would see the landlord's action of re-letting only as an action by an agent of tenant for a limited purpose, but the courts have been reluctant to imply such an agency.²⁴

Some movement away from the original rule has been seen in Illinois. The courts have held that if a tenant locates and tenders to a landlord a sub-tenant who is reasonably similar to the original tenant and who wishes to use the premises for a similar purpose, the landlord can refuse to accept, but must thereafter mitigate his tenant's liability for rent to the extent of the amount that the tendered sub-tenant would have been willing to pay in his place.²⁵ Such a doctrine is healthy, and one could only hope that the courts would go one step further and imply a duty on the landlord to use a reasonable amount of effort to locate a similar tenant after abandonment by his original tenant.²⁶ This is not an exhaustive list of the problem areas in the landlord-tenant relationship, but it will act as a foundation around which ideas for re-defining the duties and obligations of parties to a modern residential rental agreement can be built.

AREAS OF SOLUTION

Having isolated some of the problems surrounding the landlord-tenant relationship, and having discussed some of the legal principles which reinforce these problems, it is advantageous to look toward possible solutions in Illinois. Certain corrections have been reached through judicial application of equitable principles in various jurisdictions, and many commentators advise a continuation along these lines.²⁷ Such reasoning is predicated upon a belief that the political realities of today place viable legislative reform of the landlord-tenant relationship in a rather precarious position.

Illinois courts, however, have been reluctant to make radical de-

24. See Note, *Landlord's Duty to Mitigate Damages Upon Tenant's Default*, 24 U. CHI. L. REV. 567, 570 (1957).

25. *Scheinfield v. Muntz T.V., Inc.*, 67 Ill. App. 2d, 214 N.E.2d 506 (1966); *Reget v. Dempsey-Tegeler & Co.*, 96 Ill. App. 2d 278, 238 N.E.2d 418 (1968).

26. For a good discussion, see Groll, *Landlord-Tenant: The Duty to Mitigate Damages*, 17 DEPAUL L. REV. 311 (1968); See also 1960, U. ILL. LAW FORUM 332, *supra* note 24.

27. Schoshinski, *Remedies of the Indigent Tenant: Proposal for Change*, 54 GEO. L.J. 519 (1966); Comment, *Leases and the Illegal Contract Theory—Judicial Reinforcement of the Housing Code*, 56 GEO. L.J. 920 (1968).

partures from common law principles. They would rather look to the state legislature to decide questions of public policy.²⁸ Thus, any real progress in this area must be generated through the General Assembly. Of course, legislative reforms can take many shapes, ranging from housing code enforcement²⁹ to rent-strike legislation.³⁰ However, concentration will be made on three main approaches: direct alteration of the landlord-tenant relationship imposing substantive rights and duties upon the respective parties; legislation which would prohibit certain clauses from becoming part of a rental agreement; and, finally, uniform lease provisions. The remedies offered through these approaches will give a basis for legislative action for the immediate future.

STATUTORY IMPOSITION OF SUBSTANTIVE RIGHTS AND DUTIES

Section 2-203 of the Model Residential Landlord-Tenant Code, as drafted by the American Bar Foundation,³¹ (hereafter referred to as the Model Code) imposes certain duties on a landlord who leases residential property.³² The duties are as follows: The landlord must comply with *all* applicable provisions of state and local building or housing codes; he must keep all areas of buildings and grounds clean and sanitary; he must make all repairs necessary to put and keep the dwelling units in as good a condition as they were or should have been at the inception of the tenancy; he must maintain all electrical, plumbing, and other facilities supplied in good order; and he must provide for garbage and ash disposal and supplywater, hot water, and heat.

28. See, e.g., the discussion surrounding exculpatory clauses and public policy in *O'Callaghan v. Waller & Beckwith Realty Co.*, 15 Ill. 2d 436, 155 N.E.2d 545 (1958).

29. Pub. A. No. 76-585 (July 31, 1969), amending ILL. REV. STAT. ch. 24, §§ 11, 13, 15 (1969). This will expand the ability of private persons to bring suit to enforce the housing codes without a showing of special or unique damages. See also S.B. 665-669 passed in 76th General Assembly of the State of Illinois.

30. See Comment, *Rent Strike Legislation—New York's Solution to Landlord-Tenant Conflicts*, 40 ST. JOHNS L. REV. 253 (1966).

31. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft (1960).

32. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 1-202. Dwelling unit is defined as "a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others. Section 2-101 excludes from coverage of Art. II institutional landlords, residences under contract sales, fraternal organizations, and hotels or other transient lodgings."

In the instance of single family dwellings,³³ the landlord and tenant can agree by a separate writing that the tenant will perform certain repairs, maintenance, alterations or remodeling, but this may occur only when it is for the primary benefit of the dwelling unit, and will be substantially consumed during the tenancy, or is in exchange for consideration independent of the lease agreement. In the instance of non-single family dwellings, the landlord and tenant can agree that the tenant will repair, maintain, alter or remodel so long as such activities are supported by independent consideration and are not necessary to bring the unit into compliance with housing or building codes. The main objections to section 2-203 may lie in the landlord's duty to comply with all building and housing codes and to maintain the dwelling unit itself in as good a condition as it was or should have been at the inception of the tenancy. Of course, these duties are objectionable in proportion to the remedy given to the tenant for breach. For instance, the tenant may terminate at the beginning of the term if there is a *material* non-compliance with any code, statute, or regulation.³⁴ "Material" may well be interpreted by the judiciary to mean such non-compliance as that which affects the habitability, health, or safety of the tenant. A problem with housing and building codes is that all applicable provisions do not directly affect the health and safety of the tenant, and only a violation of those that do should form a basis for terminating a lease agreement.

Another remedy extended to the tenant is the power to terminate immediately when a condition arises which poses as imminent threat to the health or safety of any occupant, or to terminate within one week of notice to the landlord that a condition exists which deprives the tenant of a substantial part of the benefit of the bargain or the enjoyment thereof.³⁵ This remedy is not available when the condition is caused by want of due care of the tenant, a member of his family, or other person on the premises with his consent. The remedy of termination is, in essence, an extension of the common law

33. Defined in MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 1-205 (1969), as "a structure maintained and used as a single dwelling unit (with) . . . direct access to a street or thoroughfare and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit."

34. MODEL RESIDENTIAL LANDLORD-TENANT CODE, § 2-203(2), (3), (4) (1969).

35. MODEL RESIDENTIAL LANDLORD-TENANT CODE § 2-204 (1969).

right of the tenant to quit the premises when constructively evicted.

To further understand the extent of the landlord's duty to maintain the dwelling unit, we must look to the duties imposed upon the tenant by the Model Code. The tenant is obligated to comply with applicable codes; to keep the premises he occupies as clean and sanitary as conditions of the premises permit; to dispose of rubbish; to keep plumbing fixtures as clean as conditions will permit; to use plumbing and electrical fixtures properly; and not to permit any person on the premises with his permission "willfully or wantonly [to] destroy, deface, impair, or remove any part of the structure or dwelling unit or facilities, equipment, or appurtenances thereto, nor himself [to] do any such thing."³⁶

In reading all these sections together, it can be seen that the duty of the landlord, *vis-a-vis* the dwelling unit itself, is not so broad as might have been thought at first. The tenant is under a duty to keep his unit clean and sanitary and not to commit wilful (or voluntary) waste. Thus, the provisions are, in essence, an elimination of the doctrine of permissive waste. Once the landlord puts the premises into a satisfactory state of repair, he cannot relieve himself of the obligation to keep it in such a condition when that condition is threatened by *natural* deterioration, except by an independent agreement supported by separate consideration and not a condition precedent to the lease.³⁷ To impose such a burden upon the landlord is not so distasteful as it might seem. As was argued earlier, at the minimum the landlord should be expected to use a portion of his rental income to maintain the condition of his investment. Although this duty will not reverse the present deteriorating condition of slum housing, it will act to inhibit future deterioration to the extent that the landlord cannot allow premises to slip below reasonable standards during the tenancy (he must in any event have premises in good condition at the inception of the tenancy). In the last analysis, this provision enables the tenant to enjoy his unit in good condition throughout his term so long as he is not responsible for its deterioration. Such a right is not disproportionate to the economic benefit which accrues to the landlord.

36. MODEL RESIDENTIAL LANDLORD-TENANT CODE, § 2-205 (1969).

37. MODEL RESIDENTIAL LANDLORD-TENANT CODE § 2-303 (1969).

Another approach which would affect the condition of rented premises can be seen in House Bill 2736.³⁸ This bill would impose a duty upon landlords to lease and maintain premises in a reasonable state of repair, defined as that state of repair which a reasonable man would expect to insure utility, health, and safety in the use of the leased premises. The standard is made a little less vague in that a minimum requirement is compliance with the appropriate codes. The tenant is obligated to warn the landlord of any defect and the landlord is given thirty days to repair. Failure to repair within thirty days causes the landlord to be liable for the cost of repairs and for injuries proximately caused by the defect.³⁹ The landlord is not liable for defects which the tenant, or members of his household, cause to the leased premises.⁴⁰

House Bill 2736 is good as far as it goes, but it leaves to the courts the task of attaching a meaning to "that state of repair which a reasonable man" would have. It is lacking in the delineation of the rights and duties of the parties which is necessary to any comprehensive statutory revision in the area. Also lacking is a viable remedy. The tenant's only redress is to sue the landlord for damages in a court of law or to seek specific performance of the implied covenant to maintain and repair.

House Bill 2204⁴¹ purports to imply a covenant to repair within the rental agreement. Section 3.8 declares that

. . . in every rental agreement entered into . . . there is included a covenant by the landlord that at the commencement and at all times during the continuation of the tenancy the dwelling unit is and will be maintained in a condition reasonably and decently fit for human habitation, and that it and the apartment building in which it is located is not and will not be in such a condition as to endanger the life, health and safety of the tenant.

The breadth of the covenant and the question of a breach is to be determined with due weight given to dwelling codes and certificates of compliance. If a tenant sues, the landlord can defend by claim-

38. H.B. 2736, introduced 76th General Assembly of the State of Illinois by Reps. McLendon, Harold Washington, Ewell, Caldwell, Taylor, Houlihan, R.L. Thompson, and Davis. Tabled June 4, 1969, by the Committee on the Judiciary.

39. H.B. 2736, 76th General Assembly §§ 2-2, 2-3, 2-4 (1969).

40. H.B. 2736, 76th General Assembly § 2-6 (1969).

41. H.B. 2204, introduced 76th General Assembly of the State of Illinois by Reps. Burdith and Peirce. Committee on Judiciary recommended passed as amended; June 6, passed as amended; June 7, Senate; June 11, Committee on Judiciary (1969).

ing: that the tenant, or his household, or a guest caused the conditions; that the tenant refused landlord entry to correct the conditions; that the landlord had no knowledge of the conditions; or that the landlord otherwise exercised due care. The tenant is given the remedy of either terminating the rental agreement,⁴² or of suing for actual damages.⁴³ However, the breach cannot be asserted and pleaded as a set-off against a claim for rent, nor will any tort liability of the landlord rise beyond that imposed by the common law.

It is in the remedy section that House Bill 2204 is weak. It gives to the tenant the power only to terminate or sue for breach. Even House Bill 2736 goes further, and would allow damages for the injury of a person due to the landlord's failure to repair.

Neither House Bill 2204 nor House Bill 2736, however, would give the tenant the right to set-off the costs of repair in an action by the landlord for rent. This is a problem which stems from the lack of mutuality inherent in the lease agreement. In this area, the Model Code is very strong. There are at least two provisions which impose mutuality in this type of situation: first, there is section 2-102 which states that all promises in a rental agreement are mutual and dependent; second, section 2-206 gives the tenant the right to deduct from the rent up to \$50.00 compensation for repairs which the landlord was under a duty to make, but which the tenant himself made two weeks after the landlord was notified of the defect. These are excellent provisions, for the greatest leverage which the tenant has is in the rent payment which he tenders to the landlord.

The Model Code carefully defines the duties of the parties, allowing the tenant to withhold to the extent of self-repair after reasonable notice, or allowing him a set-off when the landlord sues for rent; this is certainly reasonable. Such provisions are in keeping with sound commercial logic and afford the tenant a realistic remedy. The mere power to sue for breach of an express or implied covenant to repair presupposes a protected party with adequate resources to retain counsel to press the suit. Although the neighborhood legal clinics are attempting to make legal aid available to the poor tenant, such clinics are not adequately staffed to make a suit for breach a viable

42. H.B. 2204, 76th General Assembly § 3.9(a) (1969).

43. H.B. 2204, 76th General Assembly § 3.9(b) (1969).

remedy to a large segment of tenants. It is in this instance that rent withholding or set-off is advantageous.

As we have seen, House Bills 2204 and 2736 and the Model Code have all eliminated caveat emptor as it is known today; they have all altered the conventional doctrine of waste; and at least the Model Code has imposed the concept of mutuality upon the parties to a lease. Finally, it is the Model Code which approaches the problem of mitigation of damages. This appears in two separate sections of the Code.

Section 2-308(4) makes the lessee liable to the lessor for the lower of the following if the lessee wrongfully quits the premises with intention to abandon: 1. the entire rent for the remainder of the term; or 2. the rent accrued during a period reasonably necessary to re-rent the premises plus the difference between the fair rental and the previous rent agreed to, plus a reasonable commission for re-renting the premises. Part 2 applies even if the landlord did not make an attempt to re-rent. This accomplished the imposition of the duty to mitigate damages which has been accepted in commercial contracts for centuries.⁴⁴ It would impose no unconscionable duty upon the landlord; it would simply assure both parties that only actual damages will be assessed against one in default.

Section 2-403 of the Model Code affirms free alienability of the lease rights and allows such alienability to be conditioned only upon the landlord's consent. The landlord's consent, however, can only be withheld upon reasonable grounds,⁴⁵ and if consent is withheld without reasonable grounds, the tenant is given the option of terminating. The section expressly disallows considerations of race, creed, sex, religion, political opinion or affiliation, or national origin from a listing of potential grounds for withholding consent. It should be

44. See generally *supra* note 21.

45. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-403(5) (1969) defines the following as reasonable grounds to withhold consent: (a) Insufficient credit standing or financial responsibility. (b) Number of persons in the proposed household. (c) Number of persons under 18 in the proposed household. (d) Unwillingness of the prospective tenant to assume the same terms as are included in the existing rental agreement. (e) Proposed maintenance of pets. (f) Proposed commercial activity. (g) Written information signed by a previous landlord, which shall accompany the rejection, setting forth abuses of other promises occupied by the prospective subtenant.

noted that this differs from a situation previously discussed⁴⁶ wherein a landlord who refused the tender of a sub-tenant was obliged to mitigate the tenant's liability for rent. Section 2-403 makes the tender of a lower rent by a proposed sub-tenant reasonable grounds for withholding consent. Of course, this section is complemented by the general section on mitigation.⁴⁷

Although a complete discussion of the Model Code is beyond the scope of this comment,⁴⁸ there are two other sections which merit some discussion: sections 2-406 and 2-407. Section 2-406 forbids a landlord's waiver of liability imposed by the Code. House Bill 2204 section 3.1 (a) (b), and House Bill 2736 section 3-4 have similar provisions. The main reason that this bears mention revolves around the recent attempt of the legislature to pass a similar provision.⁴⁹

Section 2-407 prohibits certain types of retaliatory conduct on the part of landlord when the tenant complains to a municipal authority of code violations, or when the tenant requests repairs under section

46. See *supra* note 25.

47. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-308 (4) (1969).

48. Excluded from our discussion out of importance are: MODEL RESIDENTIAL-LANDLORD-TENANT CODE, Tentative Draft, Article III (1969) dealing with: Appointed counsel for tenants, Summary Proceeding for Possession, Apartment Building Tenants' Receivership and Penalties.

49. Exculpatory clauses within leases were held valid in *Jackson v. First National Bank of Lake Forest*, 415 Ill. 453, 114 N.E.2d 721 (1953). See also *O'Callaghan v. Waller and Beckwith Realty Co.*, *supra* note 28. The Illinois Supreme Court has refused to make a judicial alteration in the public policy of the state, leaving that task to the legislature. *Sweney Gasoline and Oil Co. v. Toledo, Peoria & Western R.R. Co.*, 42 Ill. 2d 265, 247 N.E.2d 603 (1969); *Schek v. Chicago Transit Authority*, 42 Ill. 2d 362, 247 N.E.2d 886 (1969).

The *Sweney* case overturned a 1959 statute, ILL. REV. STAT. ch. 80, § 15a (1959) which declared exculpatory clauses within a lease to be void as against public policy. The statute was found to be in violation of art. IV, § 22 of the Illinois Constitution (an exception from coverage was construed to be a special privilege and immunity to a corporation).

House Bill 2086 declares: "Every covenant, agreement or understanding in or in connection with or collateral to any lease of real property, exempting the lessor from liability for damages for injuries to person or property caused by or resulting from the negligence of the lessor, his agents, servants or employees, in the operation or maintenance of the demised premises or the real property containing the demised premises shall be deemed to be void as against public policy and wholly unenforceable."

Although this Bill passed both houses of the General Assembly, it was vetoed by Governor Ogilvie, who stated as a reason for withholding approval, "It is undesirable to legislate in this area of lessor-lessee relationships. The terms contained in a lease are matters which should be determined by the contracting parties." The entire message is set out at *Appendix A*.

2-205. House Bill 2736 section 4-1, and House Bill 2204 section 3-6 also address themselves to this problem. Section 2-407 of the Model Code is, however, a much better draft than the present Illinois Statute.⁵⁰

LEASE-CLAUSE PROHIBITIONS

The purpose of the lease-clause prohibition is to prevent a landlord from introducing into a rental agreement language which is contrary to duties or obligations apportioned between the parties by statute or common law. This reasoning is predicated upon the cynical observation that the landlord will continue to include in the lease certain clauses which are, in fact, void. It should be realized that the import of a clause written in a lease can go beyond its being a purported representation of the present state of the law. If the tenant is not educated as to his rights and liabilities, he will give credence to what he reads in the lease. Thus, a clever landlord can use a meaningless clause (in terms of the real status of the law) as a lever to exert performance from, or to prevent action by, the less-wise tenant. Once the tenant seeks legal assistance, the weight of these unenforceable clauses could be discounted, but the fact of their existence might deter the tenant's seeking of counsel in the first place.

Lease-clause prohibitions are in no way repugnant to the freedom of contract for they only prohibit representation of what is contrary to law. If anything, they enhance the idea of "fair play" which has always been given happy lip service.

The lease-clause prohibition can stand independent of a more thorough legislative reevaluation of the landlord-tenant relationship, but it is best considered as complimentary to it. Any statute in this area should prevent the landlord from requiring, or any lease pertaining to residential property in this state from containing, any of the following:

1. A clause or agreement exculpating the landlord from liability for defects of the leased premises latent or consciously hidden at the time of conveyance.
2. A clause or agreement allowing the landlord free and unrestricted access to the leased premises.

Section 2-404 of the Model Code prohibits the tenant from unreasonably withholding his consent to the landlord to enter to inspect, make repairs as required, or exhibit to prospective tenants, *inter alia*. It

50. ILL. REV. STAT. ch. 80, § 71 (1969).

also prohibits the landlord from using this right of access to harass the tenant.⁵¹

3. A clause or agreement exculpating the landlord or tenant of liability imposed by statute or common law beyond such modification which may be allowed by statute or common law.⁵²

4. A clause or agreement which would terminate the lease upon breach of a covenant, except those covenants whereby the tenant promised to pay rent, to not commit voluntary waste, to not abandon the premises, or to not create a public or a private nuisance on or about the leased premises.

These provisions would need some revision if the Model Code were to be enacted. Termination would have to be allowed if the tenant failed to perform a duty imposed upon him by municipal or county housing codes,⁵³ or if the tenant refused to correct, or violated anew, a covenant, rule, or requirement in accordance with section 2-311, which the landlord demonstrates is reasonably necessary for the preservation of the property and persons of the landlord, other tenants, or any other person.⁵⁴

5. A clause or agreement which would authorize a confession of judgment in any action or legal proceeding for breach of a covenant, either expressed or implied in a lease.

6. A clause or agreement which would allow a landlord to institute new covenants governing the landlord-tenant relationship substantially different from those appearing in the lease, without the written agreement of the tenant at the time that such new covenants are proposed.⁵⁵

7. A clause or agreement which would charge against any person the costs, expenses, or attorney's fees which are incurred or expended on a claim or breach of the covenants contained in a lease except by order of court.

8. A clause or agreement which would act as a waiver of any notice required by statute or the common law.

9. A clause which would terminate a lease upon the occurrence of a condition prohibiting children, or any agreement which makes absence of children in the

51. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-405 (1969) for remedies in case of a breach of § 2-404.

52. An example of such a modification appears in the MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-203 (2), (3), (4) (1969).

53. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-304 (b) (1969).

54. Such rules, regulations, and covenants must: (a) promote the convenience, safety, or welfare of the tenants, preserve the landlord's property from abusive use, or promote fair distribution of services and facilities held out for the tenants generally; (b) be reasonably related to the purpose for which promulgated; (c) apply to all tenants of property fairly; (d) be sufficiently explicit fairly to inform the tenant of the conduct prohibited or required.

55. This draws upon MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft, § 2-311 (1) (1969).

family a condition precedent to renting residential property.⁵⁶

10. A clause which would permit the landlord to terminate a lease upon a tenant's complaining to any governmental authority of a *bona fide* violation of any building code, health ordinance, or other applicable regulation,⁵⁷ or upon a tenant pursuing any remedy given to him by law.

Finally, proposed penalties⁵⁸ should be assessed against the following parties: (a.) Any landlord who includes such prohibited clauses or agreements in the lease after the effective date of the act; or (b.) Any person who publishes or disseminates, or who causes to be published or disseminated, after the effective date of the act, any printed lease agreement to be used by landlords of this state in the leasing of residential property which includes such prohibited clauses or agreements.

UNIFORM LEASE PROVISIONS

There are two possible reasons for the implementation of the uniform lease provision. First, it could be argued that such provisions could effect a change in the substantive rights of the parties.⁵⁹ Thus, by promulgating a mandatory lease agreement to be used throughout the state, new rights would arise, for the parties would be bound by their contract. This seems a rather circuitous method of revising the landlord-tenant relationship. A forthright statutory statement of enlightened rights and duties of the parties would be more honest. Beyond that, it is hard to envision a lease agreement, broad enough to encompass the various strata of premises which might be governed by it, and still prove satisfactory to all parties concerned. Thus, a model lease of definite benefit to the slum dweller could be an unreasonable restriction on the bargaining capacity of the lessor of a higher income residence.

A second reason to implement uniform lease provisions would be to give adequate notice to the respective parties of the fundamental

56. This is compatible with ILL. REV. STAT. ch. 80, §§ 37, 38 (1969), which assesses a penalty against a landlord for failure to rent to families with children.

57. See discussion of retaliatory conduct, ILL. REV. STAT. ch. 80, § 71 (1969).

58. Penalties in the neighborhood of \$100 to \$500 for each offense would be adequate to force compliance with such a statute.

59. See Murphy, *A Proposal for Reshaping the Urban Rental Agreement*, 57 GEO. L.J. 464, 479 (1969). Mr. Murphy points out that the optimal result of the model lease is the provocation of discussion and action leading toward a solution to the urban housing problem.

duties and rights which govern their relationship. Within this context, the uniform lease provision compliments, and in a viable way supplements, the terms of a residential landlord-tenant code and statutory lease-clause prohibitions. Although it is said that all persons are presumed to know the law, in reality this does not hold true. Perhaps if it did, attorneys would have much less to do. If a party can afford to retain counsel, he will be advised of his rights. In the process of litigating, a party will be advised of his rights. But to the poor or ignorant tenant, not advised of the duties owed to him or owing to his landlord, litigation is often one step removed from the realm of the feasible.

Proceeding upon the assumption that a fundamental notice of rights and duties is desirable, and that the uniform lease provision is an excellent vehicle for giving this notice, every effort to render these provisions intelligible to the reader for whom they are intended should be made. It would be pertinent then to discuss some uniform lease provisions consistent with statutory changes of residential landlord-tenant relationships.

1. The landlord promises and warrants that at the time he delivers the premises for possession they will be fit for habitation and in conformance with all provisions of any state or local statute, code, regulation, or ordinance governing dwelling units in the area wherein the premises are located. The landlord promises and warrants this notwithstanding any inspection made by the tenant prior to taking possession of the premises.

This clause would serve as notice of the fundamental duty of the landlord to render habitable premises at the beginning of the term.⁶⁰ It rejects the doctrine of caveat emptor and relieves the tenant of a duty to inspect the premises and consequently taking on the burden of determining habitability.

2. The landlord promises that he will keep all areas of the buildings, grounds, and facilities in a safe and sanitary condition, that he will make all repairs necessary (except those defects caused by the tenant, the tenant's family, or someone visiting the tenant) to keep the dwelling unit in the condition that the landlord promised and warranted it to be when he delivered possession, and to maintain all electrical, plumbing, and other facilities supplied by him in good working order.

This is the general covenant to repair set out in the Model Code at section 2-203. As discussed earlier, the tenant can agree to assume certain duties of maintenance and repair in the instance of single family

60. See MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-203 (1) (a) (1969).

residences, when this assumption of duty is in writing and supported by consideration independent of the rental agreement. However, the covenant set out here should appear in all leases of residences for it is the basic duty implied by law.

3. Except as altered by a separate written agreement in the case of a single family residence, the landlord promises to provide facilities for the removal of ashes, rubbish, and garbage and to provide for their frequent removal; and to supply hot water and heat as reasonably required by the tenants.

4. The landlord agrees that the performance by the tenant of the tenant's promises depends upon the landlord's substantial performance of the landlord's promises.

This clause and clause number 9, *infra*, will perhaps be among the most controversial proposed. Yet the theory that they are founded upon was first espoused in the case of *Kingston v. Preston*,⁶¹ decided by Lord Mansfield in 1773. This case held that mutual promises in a contract, absolute in form, were nevertheless conditional and dependent if this was the intention of the parties. Thus, for a plaintiff to recover damages, he must first allege and prove his own substantial performance.⁶² One might well wonder how such a commercially reasonable doctrine has failed to become integrated with the law of leases over the past 200 years. Perhaps Williston's argument, as mentioned previously,⁶³ that the law of leases simply evolved at an earlier date and was solidified by the time *Kingston* was decided, should be taken at face value.

An analysis of the problem in terms of power politics, however, would be more accurate. Legislators have shown themselves to be consistently able to appreciate the real need to protect the rights of ownership of the landlord, but have certainly not given adequate attention to protecting the interests of the tenant. Once again we must fall back on one of the basic assumptions; the landlord-tenant relationship is essentially a commercial one and both parties should have the advantage of all commercial safeguards evolved through the years.

5. The tenant promises to promptly pay rent to the landlord by the — day of the month.

6. The tenant promises to comply with all obligations imposed upon him by municipal, county, and state codes, regulations, and ordinances. The tenant also

61. 2 Doug. 684, 98 Eng. Rep. 606 (1773). See also SIMPSON, HANDBOOK OF THE LAW OF CONTRACTS 316 (2d ed. 1965).

62. RESTATEMENT OF THE LAW OF CONTRACTS 266 (1933).

63. *Supra* note 20.

promises to keep his unit clean and sanitary, to dispose of garbage and waste in a sanitary manner, to keep plumbing facilities clean and sanitary, to properly use all electrical and plumbing fixtures and to comply with all rules of the landlord that are necessary for the protection of the property of the landlord, other tenants, or any other person.⁶⁴

7. The tenant promises not to, nor to let anyone on the premises with his permission, wilfully destroy, deface, damage, impair or remove any part of the structure, dwelling unit, facilities, or equipment of, or connected with the premises.⁶⁵

8. The tenant promises to notify the landlord of any defect on the premises which the landlord promises to repair.⁶⁶ The tenant also promises to allow the landlord access to his unit at a reasonable hour so that the landlord can inspect, perform services, or repair, but the tenant will be given a notice that the landlord wishes access at least two days in advance whenever possible.⁶⁷ The tenant also promises to reasonably allow the landlord to show the dwelling unit to prospective purchasers, mortgagees, or tenants.⁶⁸

9. The tenant agrees that the performance by the landlord of the landlord's promise depends upon the tenant's substantial performance of the tenant's promises.

These nine provisions accomplish the following: They notify the parties of the duties and covenants each undertakes; they establish the principle of mutuality in the lease; they set out the required warranty of habitability; and they attempt to do all of the above in as nontechnical a manner as possible so as to be understood by the greatest number of people.

On the other hand, the landlord has a great deal of latitude in deciding upon the total lease. He is restricted, of course, by lease-clause prohibitions, but he is free to make whatever lawful arrangements he finds necessary to govern the demise of his property.

Such uniform lease provisions must be mandatory in all written leases. They should not be capable of alteration by any collateral agreement, and must be absolutely implied in law if omitted from a lease for residential property. Also, it should be a misdemeanor for a landlord to knowingly alter or omit these provisions in whole or in part. The uniform lease provisions accomplish the purpose intended

64. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft §§ 2-303 (1), (2), (3), (4), (6) (1969).

65. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-303 (5) (1969).

66. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-305 (1969).

67. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-404 (2) (1969).

68. MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft § 2-404 (1) (1969).

only when they appear with regularity wherever applicable.

The model lease proposed by the Council on Community Affairs of Washington, D.C.,⁶⁹ is much more extensive. In fact, what is proposed is an entire agreement with clauses touching rent receipts,⁷⁰ return of keys,⁷¹ and the charge which accrues to the landlord who requires payment by money order.⁷²

The political obstacles confronting such a statutory revision are formidable, and it would behoove us to avoid as many of them as possible. In that most of the substantive changes recommended are certainly not disproportionately favorable to the tenant, the opposition from landlords should not be too severe. However, when one approaches the area of rent strike legislation, apartment building receiverships, and mandatory leases, tempers flare. The provisions outlined above are adequate to afford the necessary notice to the parties without unduly exacerbating any hostile opposition which might be generated by this legislative package.

CONCLUSION

What has been accomplished thus far is the setting out of the minimum legislative changes that would be necessary to impart a modern complexion to the residential landlord-tenant relationship. It is suggested that this be done by a coordinated system of statutory substantive rights and duties, lease-clause prohibitions, and uniform lease provisions. However much these changes will improve the present situation, it is well to concentrate on a few of the problems which lie beyond the scope of these recommendations.

Because it is a lessor's market, there is a good chance that any expenses resulting from obligations imposed upon landlords will be passed on to tenants in the form of higher rents. If a truly competitive atmosphere existed, the ability of a tenant to choose between many competing landlords would minimize this passing on of expenses to the consumer. In that the higher income market is still competitive, costs will not be assessed to those best able to absorb

69. *Supra* note 59, at 480.

70. PROPOSED MODEL RENTAL AGREEMENT OF WASHINGTON, D.C., COUNCIL ON COMMUNITY AFFAIRS, 1961; ¶ 13 (Published at 57 GEO. L.J. 480 (1969)).

71. *Id.* at ¶ 15.

72. *Id.* at ¶ 14.

them. It is the lower and middle income renter who will lease units most in need of upgrading, and who is least able to bear the burden of increased living costs resulting from higher rents. A great deal of urban housing is so dilapidated that even after passing some of the cost of upgrading to the consumer in the form of higher rents, the remaining cost will be prohibitive. In these situations, the lessor will be better off in removing the improvement from the real estate, for the property will be more valuable vacant. In a housing market which is constantly shrinking for certain segments of society, this could be disastrous. More, not fewer, units are required. Once the profit motive is eliminated, the private sector will probably not be a dependable source for renovation of this dilapidated property. Thus, rather than passively experiencing the demolition of needed units, serious consideration might well be given to building receiverships,⁷³ rent subsidization, and possibly even public grants to be used in upgrading property.⁷⁴ Finally, we might find it necessary to supply public low-and middle-income housing. A scheme whereby a tenant in such housing applies rent toward a condominium-type interest in his unit might be palatable to the greatest number of people.

Those who work with the law must have an eye for the future as well as an appreciation for the past. The recommendations appearing in this comment would have been timely twenty-five years ago. One can only suppose that, had they been enacted at that time, much of the deterioration in our inner-city housing might have been averted. It is hoped that the problems confronting housing in the late 1980's will be minimized, not exaggerated, by the legislative policies of today.

73. See MODEL RESIDENTIAL LANDLORD-TENANT CODE, Tentative Draft §§ 3-303, 3-304, 3-305, 3-306, 3-309 (1969).

74. See Montreal Charter 1965, § 787 a-e, 1-14 Eliz. 2, c. 84 § 33.

APPENDIX A

Veto Message on HB 2086
October 13, 1969

I herewith return, without my approval, House Bill 2086 entitled "An Act making Void and Unenforceable Certain Agreements exempting lessors from liability and repealing a certain act."

House Bill 2086 makes void and unenforceable any agreement exempting the lessor of real property from liability for injury resulting from his or his agents negligence in the operation or maintenance of the lessor's property. The provisions of the bill are retroactive to 1959.

It is undesirable to legislate in this area of lessor-lessee relationships. The terms contained in a lease are matters which should be determined by the contracting parties. In addition, the retroactive effect of this bill is of doubtful constitutionality.

For these reasons, I veto and withhold my approval from this bill.

Respectfully submitted,

/S/ Richard B. Ogilvie

APPENDIX B

AN ACT in relation to the leasing of residential property and to repeal Acts therein named.

Be it enacted by the People of the State of Illinois represented in the General Assembly:

ARTICLE I. GENERAL DEFINITIONS

SECTION 1-1. A "landlord" or lessor is any person, corporation, partnership, landtrust, or organization of any kind, which conveys under a lease improved real property for use as a residence.

SECTION 1-2. A "tenant" or "lessee" is any person, corporation, partnership, landtrust, or organization of any kind which is the grantee of improved real property for use as a residence under a lease.

SECTION 1-3. "Lease" means a written or verbal agreement which is a conveyance of improved real property for use as a residence which may or may not include other contractual obligations beyond a covenant that the lessee pay rent and a covenant that the lessee will not commit waste.

SECTION 1-4. "Dwelling Unit" means improved real property for use as a residence which a landlord conveys to a tenant for a periodic tenancy, term tenancy, or tenancy at will.

ARTICLE II. LANDLORD OBLIGATIONS AND TENANT REMEDIES

SECTION 2-1. LANDLORD TO SUPPLY AND MAINTAIN FIT DWELLING UNIT

(1) The landlord shall at all times during the tenancy:

(a) comply with all applicable provisions of any State or local statute, code, regulation, or ordinances governing the maintenance, con-

struction, or use, of the dwelling unit and the property of which it is a part;

(b) keep all areas of his building, grounds, facilities and appurtenances in a clean and sanitary condition;

(c) make all repairs and arrangements necessary to put and keep the dwelling unit and the appurtenances thereto in as good condition as they were, or ought by law or agreement to have been, at the commencement of tenancy;

(d) maintain all electrical, plumbing, and other facilities supplied by him in good working order;

(e) except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of ashes, rubbish, and garbage, and arrange for the frequent removal of such waste; and

(f) except in the case of a single family residence, or where the building is not equipped for the purpose, supply water and hot water as reasonably required by the tenant and supply adequate heat between October 1 and May 1.

(2) The landlord and tenant of a single family residence may agree by a signed writing independent of the rental agreement that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling, but only if:

(a) the particular work to be performed by the tenant is for the primary benefit of his dwelling unit, and will be substantially consumed during the remaining tenancy; or

(b) adequate consideration apart from any provision of the rental agreement is exchanged for the tenant's promise. In no event under this subsection may the landlord treat performance of this agreement as a condition to any provision of the rental agreement.

(3) The landlord and tenant of any other dwelling unit may agree by a conspicuous writing independent of the rental agreement that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling, but only if:

(a) the work is not necessary to bring a non-complying dwelling unit into compliance with a building or housing code, ordinance, or the like; and

(b) the agreement is supported by adequate consideration apart from the rental agreement. In no event under this subsection may the landlord treat performance of this agreement as a condition to any provision of the rental agreement.

(4) Where a single family residence which is the owner's usual residence is rented during a temporary absence of the owner, the landlord and tenant may agree in writing that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling.

SECTION 2-2. TENANT MAY TERMINATE AT BEGINNING OF TERM

If the landlord fails to conform substantially to the rental agreement, or if there is a material non-compliance with any code, statute, ordinance, or

regulation governing the maintenance or operation of the premises, the tenant may, on notice to the landlord, terminate the rental agreement and vacate the premises at any time during the first week of occupancy. The tenant shall retain this right to terminate beyond the first week of occupancy so long as he remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition or conditions which would justify termination by the tenant under this section.

SECTION 2-3. TENANT'S REMEDY TO TERMINATION AT ANY TIME

(1) If there exists any condition which deprives the tenant of a substantial part of the benefit and enjoyment of the premises, the tenant may notify the landlord in writing of the situation and, if the landlord does not remedy the situation within one week, terminate the rental agreement. Such notice need not be given when the condition renders the dwelling unit uninhabitable or poses an imminent threat to the health or safety of any occupant. The tenant may not terminate for a condition caused by the want of due care of the tenant, a member of his family, or other person on the premises with his consent.

(2) If the condition referred to in subsection (1) was caused wilfully or negligently by the landlord, the tenant may recover any damages sustained as a result of the condition including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing.

SECTION 2-4. TENANT'S REMEDY OF REPAIR AND DEDUCT FOR MINOR DEFECTS

(1) If the landlord of an apartment building or single family dwelling fails to repair, maintain, keep in sanitary condition, or perform in any other manner required by section 2-1 or as agreed to in a rental agreement, and fails to remedy such failure within two weeks after being notified by the tenant to do so, the tenant may further notify the landlord of his intention to correct the objectionable condition at the landlord's expense and immediately do or have done the necessary work in a workmanlike manner. The tenant may deduct from his rent a reasonable sum, not exceeding fifty (50) dollars, for his expenditures by submitting to the landlord copies of his receipts covering at least the sum deducted. If the tenant submits a written estimate by a qualified workman a least two weeks before having the work done, and substitutes workmen and materials as the landlord may reasonably request in writing, the tenant may deduct from his rent a reasonable sum not exceeding one month's rent by submitting to the landlord copies of his receipts covering the sum deducted.

(2) In no event may a tenant repair at the landlord's expense when the condition complained of was caused by the want of due care of the tenant, a member of his family, or other person on the premises with his consent.

(3) Before correcting conditions affecting facilities shared by more than one dwelling unit, the tenant shall notify all other tenants sharing such facilities of his plans, and shall so arrange the work as to create the least practicable inconvenience to such other tenants.

SECTION 2-5. TENANT'S REMEDIES FOR FAILURE TO SUPPLY HEAT, WATER, OR HOT WATER

(1) If the landlord fails to provide hot water to an apartment building tenant, when the building is equipped for the purpose, for 5 days after the tenant notifies him of the failure, the tenant may:

(a) upon written notice to the landlord, immediately terminate the rental agreement; or

(b) upon notice to the landlord, keep one-fourth of the rent accrued during any period when hot water is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.

(2) If the landlord fails to provide a reasonable amount of water or, between October 1 and May 1, heat to the apartment building tenant, when the building is equipped for the purpose, the tenant may:

(a) upon written notice to the landlord, immediately terminate the rental agreement; or

(b) upon notice to the landlord, procure adequate substitute housing for as long as heat or water is not supplied, during which time the rent shall abate and the landlord shall be liable for any additional expense incurred by the tenant, up to one-half the amount of abated rent. This additional expense shall not be chargeable to the landlord if he is able to show impossibility of performance.

SECTION 2-6. TENANT'S REMEDIES FOR FIRE OR CASUALTY DAMAGE

When the dwelling unit or any of the property or appurtenances necessary to the enjoyment thereof are rendered partially or wholly unusable by fire or other casualty which occurs without fault on the part of the tenant, a member of his family, or other person on the premises with his consent, the tenant may:

(1) immediately quit the premises and notify the landlord of his election to quit within one week after quitting, in which case the rental agreement shall terminate as of the date of quitting. If the tenant fails to notify the landlord of his election to quit, he shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacation or impossibility of further occupancy; or

(2) if continued occupancy is otherwise lawful, vacate any part of the premises rendered unusable by the fire or casualty, in which case the tenant's liability for rent shall be no more than the market value of that part of the premises which he continues to use and occupy.

SECTION 2-7. TORT REMEDY FOR INJURIES DUE TO LANDLORD'S BREACH.

If after having received notice of a defect of the dwelling unit which he is bound to repair, the landlord does not repair within two weeks, he shall be liable for all injuries which are proximately caused by the defect, to the person or property of the tenant or anyone lawfully on the premises.

Impossibility of completing repair within two weeks of notice will be a defense, in which event liability will arise if defects are not repaired within a reasonable time after receiving notice.

ARTICLE III. TENANT OBLIGATIONS AND LANDLORD REMEDIES

SECTION 3-1. TENANT TO MAINTAIN DWELLING UNIT

Each tenant shall comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and State codes, regulations, ordinances, and statutes, and in particular:

- (1) keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;
- (2) dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner;
- (3) keep all plumbing fixtures as clean and sanitary as their condition permits;
- (4) properly use and operate all electrical and plumbing fixtures;
- (5) not permit any person on the premises with his permission to wilfully or wantonly destroy, deface, damage, impair, or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing; and
- (6) comply with all covenants, rules, requirements, and the like which are in accordance with section 3-6 and which the landlord can demonstrate are reasonably necessary for the preservation of the property and persons of the landlord, other tenants, or any other person.

SECTION 3-2. REMEDY FOR TENANT'S WASTE, FAILURE TO MAINTAIN, OR UNLAWFUL USE

(1) If the tenant fails to carry out any responsibility in relation to his tenancy imposed by the preceding section, the landlord upon learning of such failure shall notify the tenant in writing of the lapse and allow a specified time, not less than 5 days from the receipt thereof, for the tenant to remedy such failure. Upon the expiration of this period,

- (a) if the tenant's failure can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item, or the like, the landlord may so remedy the tenant's failure and bill him for the actual and reasonable cost of such remedy. This bill shall be treated by all parties as rent due and payable on the next regular rent collection date or, if the tenancy has terminated, immediately upon receipt; or
- (b) if the tenant's failure constitutes a breach of an obligation imposed upon tenants by a provision of a municipal, county, or state Code, ordinance, or statute, the landlord may terminate the rental agreement and bring a proceeding for possession.

No allowance of a period to correct a deficiency shall be required when a failure by the tenant causes or threatens to cause irremediable harm to any person or property.

(2) The landlord may bring an action or proceeding for waste or for breach of contract for damage suffered by the tenant's wilful or negligent failure to comply with his responsibilities under the preceding section.

SECTION 3-3. TENANT'S RESPONSIBILITY TO INFORM LANDLORD

Any defective condition of the premises which comes to the tenant's atten-

tion, which he has reason to believe is unknown to the landlord, and which he has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported by the tenant to the landlord as soon as practicable.

SECTION 3-4. LIABILITY FOR FAILURE TO INFORM

The tenant shall be responsible for any liability or injury resulting to the landlord as a result of the tenant's failure to carry out the duty imposed by the preceding section.

SECTION 3-5. LANDLORD'S REMEDIES FOR ABSENCE, MISUSE, AND ABANDONMENT

(1) If the rental agreement provides for notification of the landlord by the tenant of an anticipated extended absence, and the tenant fails to make reasonable efforts to comply with such requirement, the tenant shall indemnify the landlord for any harm resulting from such absence.

(2) The landlord may, during any extended absence of the tenant, enter the dwelling unit as reasonably necessary for inspection, maintenance, and safe-keeping.

(3) If the tenant wrongfully quits the dwelling unit and unequivocally indicates by words or deeds his intention not to resume tenancy, he shall be liable for the lesser of the following for such abandonment:

(a) the entire rent due for the remainder of the term; or

(b) all rent accrued during the period reasonably necessary to re-rent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises. This subsection shall apply, if less than (a), notwithstanding that the landlord did not re-rent the premises.

SECTION 3-6. TENANT TO USE PROPERLY

(1) The tenant shall obey all obligations or restrictions, whether denominated by the landlord as "rules" or otherwise, concerning his use, occupation, and maintenance of his dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if:

(a) such obligations or restrictions are brought to the attention of the tenant at the time of his entry into the agreement to occupy the dwelling unit; or

(b) such obligations or restrictions, if not so known by the tenant at the commencement of tenancy, are brought to the attention of the tenant and are consented to in writing by him.

(2) No such restriction or obligation shall be enforceable against the tenant unless:

(a) It is for the purpose of promoting the convenience, safety, or welfare of the tenants of the property, or for the preservation of the landlord's property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally.

(b) It is reasonably related to the purpose for which it is promulgated.

(c) It applies to all tenants of the property in a fair manner.

(d) 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.

SECTION 3-7. REMEDY FOR IMPROPER USE

(1) If the tenant breaches any rule, covenant, or the like under the preceding section, the landlord may notify the tenant of his breach and must allow 5 days after such notice for the remedy or correction of such breach. Such notice shall be in substantially the following form:

(name and address of tenant) _____ (date)

You are hereby notified that you have failed to perform according to the following rule, covenant, restriction, etc.:

(specify rule allegedly breached)

Be informed that if you (continue violating) (again violate) this (rule) after (a date not less than five days after this notice), the Landlord may terminate the lease and sue for possession of your dwelling unit.

(2) If the breach complained of continues or recurs after the date specified in the notice, the landlord may bring a proceeding for possession within 30 days after such continued or renewed breach.

SECTION 3-8. WAIVER OF LANDLORD'S RIGHT TO TERMINATE

Whenever the landlord accepts rent after learning of a breach or has accepted performance by the tenant which is at variance with the terms of the rental agreement or subsequent rules, he has waived his right to terminate the rental agreement on account of such breach or varying performance.

ARTICLE IV. OTHER LIMITATIONS ON LANDLORDS AND TENANTS

SECTION 4-1. SUBLEASE AND ASSIGNMENTS

(1) Unless otherwise agreed in writing, the tenant may sublet his premises or assign the rental agreement to another without the landlord's consent.

(2) The tenant's right to sublease the premises may be conditioned on obtaining the landlord's consent, which shall be withheld upon reasonable grounds as specified in subsection (5); no further restriction on sublease shall be effective.

(3) When the rental agreement requires the landlord's consent to sublease, the tenant may secure one or more persons who are willing to sublet the premises. Each such prospective subtenant shall make a formal, written, signed offer to the landlord, containing all of the following, except as the landlord may waive one or more items:

- (a) the prospective subtenant's full name and age.
- (b) the prospective subtenant's marital status.
- (c) the prospective subtenant's occupation, place of employment, and name and address of employer.
- (d) the names and ages and relationships to the prospective subtenant of all persons who would normally reside in the premises.
- (e) two credit references, or responsible persons who will confirm the financial responsibility of the prospective subtenant.

(f) the names and addresses of all landlords of the prospective subtenant from whom he has leased or rented during the prior three years, (or, if more than three, any three of them).

(4) Within 10 days, not including legal holidays, after such a written offer has been delivered or mailed to the landlord, the landlord may reject the prospective subtenant by delivering or mailing to the tenant a written reply signed by the landlord which shall contain one or more specific grounds for the rejection.

If the landlord fails to reply within the 10 days, or if his written reply fails to give reasonable grounds for rejecting the prospective subtenant, the tenant may, at his option, terminate the rental agreement by giving written notice to the landlord within 90 days following the lapse of the 10 day reply period or the receipt of the rejection reply which fails to state any reasonable ground for rejection.

Thirty days after such notice is delivered or mailed to the landlord, the rental agreement shall terminate. The tenant shall be subject to no damages, penalty, or forfeiture of any part or all of his security deposit or any other payment for such termination.

(5) Reasonable grounds for rejecting a proposed subtenant include any facts which reasonably indicate that the proposed tenancy would be less favorable to the landlord than the existing tenancy, including, but not limited to:

- (a) Insufficient credit standing or financial responsibility.
- (b) Number of persons in the proposed household.
- (c) Number of persons under 18 in the proposed household.
- (d) Unwillingness of the prospective tenant to assume the same terms as are included in the existing rental agreement.
- (e) Proposed maintenance of pets.
- (f) Proposed commercial activity.
- (g) Written information signed by a previous landlord which shall accompany the rejection, setting forth abuses of other premises occupied by the prospective subtenant.

No consideration of race, creed, sex, religion, political opinion or affiliation, or national origin may be relied on by the landlord as reasonable grounds for rejection.

(6) In any proceeding in which the reasonableness of the landlord's rejection shall be in issue, the burden of showing reasonableness shall be on the landlord.

SECTION 4-2. LANDLORD'S WAIVER OF LIABILITY FORBIDDEN

Every agreement between landlord and tenant in or in connection with a rental agreement of residential property exempting the landlord from liability for damages for injuries to persons or property caused by or resulting from the acts or omissions of the landlord, his agents, servants or employees, in the operation or maintenance of the dwelling unit or the property of which it is a part shall be unenforceable.

SECTION 4-3. RETALIATORY EVICTIONS AND RENT INCREASES PROHIBITED

- (1) Notwithstanding that the tenant has no written rental agreement

or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld under part 2 of this Article, no (A) action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord (B) otherwise cause the tenant to quit the dwelling unit involuntarily, nor (C) demand an increase in rent from the tenant, nor (D) decrease the services to which the tenant has been entitled, within six months after:

(a) The tenant has complained in good faith of conditions in or affecting his dwelling unit which constitute a violation of a building, housing, sanitary, or other code or ordinance, to a body charged with the enforcement of such code or ordinance; or

(b) Such a body has filed a notice or complaint of such violation; or

(c) The tenant has in good faith requested repairs under sections 2-3, 2-4, 2-5, or 2-7 of this Act.

(2) Notwithstanding subsection (1), the landlord may recover possession of the dwelling unit if:

(a) The tenant is committing waste, or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of his rental agreement; or

(c) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises; or

(b) The landlord seeks in good faith to recover possession of the dwelling unit for immediate use as his own abode; or

(d) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit; or

(e) The complaint or request of subsection (1) relates only to a condition or conditions caused by the lack of ordinary care by the tenant or another person in his household or on the premises with his consent; or

(f) The dwelling unit and other property and facilities used by or affecting the use and enjoyment of the tenant were on the date of filing of such complaint or request in full compliance with all codes, statutes, and ordinances; or

(g) The landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to (b), (c), or (d) above; or

(h) The landlord is seeking to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant previous to the complaint or request of subsection (1).

(3) Any tenant from whom possession has been recovered or who has been otherwise involuntarily despossessed, in violation of this section, shall be entitled to recover three months' rent or threefold the damages sustained by him, whichever is greater, and the cost of suit, including a reasonable attorney's fee.

(4) Notwithstanding subsection (1), the landlord may increase the rent if:

(a) The dwelling unit and other property and facilities used by and affecting the use and enjoyment of the tenant were on the date of filing of such complaint or request of subsection (1) in full compliance with all codes, statutes, and ordinances; or

(b) The landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with his complying with the complaint or request, not less than four months prior to the demand for an increase in rent; and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs; or

(c) The landlord has completed a substantial capital improvement of the dwelling unit or the property of which it is a part not less than four months prior to the demand for increased rent, and the increase in rent does not exceed the amount which may be claimed for Federal income Tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement; or

(d) The complaint or request of subsection (1) relates only to a condition or conditions caused by the want of due care by the tenant or another person of his household or on the premises with his consent; or

(e) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in his building or, in the case of a single family residence or where there is no similar dwelling unit in the building, does not exceed the market value of the dwelling unit.

ARTICLE V

SECTION 5-1. PROMISES IN RENTAL AGREEMENT MUTUAL AND DEPENDENT—INTERPRETATION

(1) Where a remedy is given to either party by this Act for a particular breach by the other party, this remedy shall be exclusive of any unmentioned remedy arising by operation of existing law or by operation of subsection (2) of this section.

(2) Material promises, agreements, covenants, or undertakings of any kind to be performed by either party to a rental agreement shall be interpreted as mutual and dependent conditions to the performance of material promises, agreements, covenants, and undertakings by the other party.

(3) A party undertaking to remedy a breach by the other party in accordance with this Act shall be deemed to have complied with the terms of this Act if his non-compliance with the exact instructions of this Act is non-material and nonprejudicial to the other party.

ARTICLE VI. PROHIBITED PROVISIONS OF THE LEASE

SECTION 6-1. No landlord will require, nor may any lease contain any of the provisions set forth in Sections 6-2 to 6-10.

SECTION 6-2. A clause or agreement exculpating the landlord or tenant

of liability imposed by this Act, other Statutes, or the common law beyond such modification which may be allowed by this Act, other Statutes, or the common law.

SECTION 6-3. A clause or agreement allowing the landlord free and unrestricted access to the leased premises.

SECTION 6-4. A clause or agreement which authorizes a confession or judgment in any action or legal proceeding for breach of a covenant, either expressed or implied, in a lease.

SECTION 6-5. A clause or agreement which would allow a landlord to institute new covenants governing the landlord-tenant relationship without the written agreement of the tenant at the time that such new covenants are proposed.

SECTION 6-6. A clause or agreement which would charge against any person the costs, expenses, or attorney's fees which are incurred or expended on a claim of breach of the covenants in the lease or any duty imposed by this act, other Statutes, or the common law, except by order of a court.

SECTION 6-7. A clause or agreement which would act as a waiver of any notice required under any section of this Act, other Statutes, or the common law.

SECTION 6-8. A clause or agreement which would terminate the lease upon breach of a covenant or rule except as provided in this Act, or any other statute, or the common law.

SECTION 6-9. A clause which would terminate a lease upon the occurrence of a condition prohibiting children, or any agreement which makes an absence of children in the family a condition precedent to renting residential property.

SECTION 6-10. A clause or agreement which would permit the landlord to terminate a lease upon a tenant complaining to any government authority of a *bona fide* violation of any building code, health ordinance, or other applicable regulation.

SECTION 6-11 (a). Any landlord who includes such prohibited clauses or agreements in the lease after the effective date of this Act shall pay to the party thereby aggrieved not less than \$100 nor more than \$500 for each violation thereof. (b) Any person, corporation partnerships, land-trust, or association which publishes or disseminates or causes to be published or disseminated, after the effective date of this Act, any printed lease agreement including such prohibited clauses, to be used by landlords of this State in the leasing of residential property, will be guilty of a misdemeanor and fined not less than \$100 nor more than \$500 for each violation. (c) In addition, any clause or agreement which is a violation of any provision in this Article will not be enforced in any court.

ARTICLE VII. UNIFORM LEASE PROVISIONS

SECTION 7-1. All written leases for the rental of dwelling units located in this state will contain the provisions set out in Section 7-2 to Section 7-10. These uniform provisions will be legibly written, typed, or printed in a size consistent with the other major provisions of the lease.

SECTION 7-2. The landlord promises and warrants that at the time he delivers the premises for possession they will be fit for habitation and in conformance with all provisions of any State or local statute, code, regulation or ordinance governing dwelling units in the area wherein the premises are located. The landlord promises and warrants this notwithstanding any inspection made by the tenant prior to taking possession of the premises.

SECTION 7-3. The landlord promises that he will keep all areas of the building, grounds, and facilities in a safe and sanitary condition, that he will make all repairs necessary (except to those defects caused by the tenant, the tenant's family, or someone visiting the tenant) to keep the dwelling unit in the condition that the landlord promised and warranted it to be when he delivered possession, and to maintain all electrical, plumbing, and other facilities supplied by him in good working order.

SECTION 7-4. Except as altered by a separate written agreement in the case of a single family residence, the landlord promises to provide facilities for the removal of ashes, rubbish, and garbage and to provide for their frequent removal; and to supply hot water and heat as reasonably required by the tenants.

SECTION 7-5. The landlord agrees that the performance by the tenant of the tenant's promises depends upon the landlord's substantial performance of the landlord's promises.

SECTION 7-6. The tenant promises to promptly pay rent to the landlord by the _____ day of the month.

SECTION 7-7. The tenant promises to comply with all obligations imposed upon him by State, municipal and county codes regulations and ordinances. The tenant also promises to keep his unit clean and sanitary, to dispose of garbage and waste in a sanitary manner, to keep plumbing facilities clean and sanitary, to properly use all electrical and plumbing fixtures and to comply with all rules of the landlord that are necessary for the protection of the property of the landlord, other tenants, or any other person.

SECTION 7-8. The tenant promises not to let anyone on the premises with his permission, willfully or negligently destroy, deface, damage, impair or remove any part of the structure, dwelling unit, facilities, or equipment of, or connected with the premises.

SECTION 7-9. The tenant promises to notify the landlord of any defect on the premises which the landlord promises to repair. The tenant also promises to allow the landlord access to his unit at a reasonable hour so that the landlord can inspect, repair or perform services, but the tenant will be given a notice that the landlord wishes access at least two days in advance whenever possible. The tenant also promises to reasonably allow the landlord to show the dwelling unit to prospective purchasers, mortgagees, or tenants.

SECTION 7-10. The tenant agrees that the performance by the landlord of the landlord's promises depends upon the tenant's substantial performance of the tenant's promises.

SECTION 7-11 (a). Any landlord who fails to include after the effective date of this Act the above lease provisions in a written lease of a dwelling

unit located in this State, will be guilty of a misdemeanor and fined not less than \$100 nor more than \$500 for each violation. (b) Any person, corporation, partnership, landtrust, or association which publishes or disseminates or causes to be published or disseminated after the effective date of this Act, any printed lease, with the intention that it be used in the renting of dwelling units located in this State, will be guilty of a misdemeanor and fined not less than \$100 nor more than \$500 for each violation, unless such printed leases contain the above required provisions. (c) When any lease of a dwelling unit located in this State fails to contain a required provision, such provision will be absolutely implied in law, and all parties to the lease will be bound as if the lease did contain the omitted provision.

ARTICLE VIII. SEVERABILITY

SECTION 8-1. SEVERABILITY

If any provision or clause of this Act or its application to any person or in any circumstances is held invalid, such invalidity will not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act will be severable.

ARTICLE IX. REPEALS

SECTION 9-1. An Act to protect the rights of tenants to complain of violations of governmental regulations", approved July 15, 1963, and "An Act regarding the leasing of dwelling houses, flats, and apartments, and defining certain offenses in connection therewith and providing a penalty for the violation thereof", filed June 16, 1909, as amended, are repealed.