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Tenant Unions: Their Law and Operation in the State and Nation

H. Edward Hales

Charles H. Livingston

NOTES

TENANT UNIONS: THEIR LAW AND OPERATION IN THE STATE AND NATION*

> Although the economic well being and prosperity of the United States have progressed to a level surpassing any achieved in world history, and although these benefits are widely shared throughout the Nation, poverty continues to be the lot of a substantial number of our people. . . . It is, therefore, the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity.[1]

Despite this declaration of national policy and the efforts of various housing programs for over three decades, decent housing remains a chronic problem for the nation's disadvantaged citizens.[2] Recent estimates indicate that over four million urban families live in "homes of such disrepair as to violate decent housing standards."[3] The war on poverty and various state efforts to alleviate the problems of inadequate housing have not achieved their anticipated success,[4] and the lack of adequate housing remains a major concern for American government.[5] Because of the failure of legislatures and the courts to solve the problems of poverty, many of the poor have adopted various forms of self-help in an effort to better their living conditions. It is the purpose of this note to examine one of the products of that effort—the tenant union.

PRESENT STATE OF THE LAW OF LANDLORD AND TENANT

Common Law Provisions

The common law has been grossly inadequate in dealing with the myriad problems of private housing in contemporary urban society. For centuries, landlord-tenant law has been hampered by principles that are rooted in the

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1. Economic Opportunity Act, 42 U.S.C. §2701 (1964).

2. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 257 (March 1, 1968).

3. Special Message to Congress on City Demonstration Programs by President Lyndon B. Johnson, Jan. 26, 1966. 112 CONG. REC. 1126 (1966).

4. Note, *Rent Withholding and the Improvement of Substandard Housing*, 53 CALIF. L. REV. 304 (1965).

5. Christian Science Monitor, May 6, 1969, at 6, col. 3 (Eastern ed.). Housing and Urban Development Secretary Romney states in the article that cities and the housing problem make up the third most serious problem facing America, preceded only by Vietnam and inflation.

feudal concepts of medieval agrarian England and do not reflect the needs of twentieth century America.[6] In recognition of the need for reform, the Model Residential Landlord-Tenant Code states:[7]

> [Present substandard housing conditions and the accompanying social ills] result in part from the often unequal bargaining power of landlords and tenants as well as from an ill-suited common law of landlord and tenant in which leases are interpreted as grants of the right of possession rather than mutual and dependent covenants; that this common law, which evolved in an agricultural setting, is inappropriate when applied to modern residential property . . . .

In order to achieve effective reform of landlord-tenant law, it is essential that many antiquated common law doctrines be discarded, or at least modified to conform more closely with present needs.[8]

Where the common law has not been abrogated by statute, the ill effects of the traditionally landlord-weighted law of landlord and tenant are readily apparent.[9] Tort liability of owners of dilapidated rental structures has long been narrowly applied.[10] The landlord has no legal duty to maintain the structure in a habitable condition in order to collect rents[11] and even the failure to comply with an express covenant to repair may not preclude rent collection.[12] In short, the common law enabled the landlord to keep the property in whatever condition he desired. The tenants' sole recourse was

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6. *See generally* Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968).

7. AMERICAN BAR FOUNDATION, MODEL RESIDENTIAL LANDLORD-TENANT CODE (Tent. Draft) §1-102, at 21 (1969).

8. *Id. General Introduction* at 5. The Model Code provides: "[P]resent-day landlord-tenant law perpetuates doctrines long defunct. These include: 1. The doctrine of waste, and its converse, that a tenant can do anything he wants with the property so long as it does not constitute waste. 2. The doctrine of *caveat emptor*, whereby the tenant takes the premises 'as is' with no recourse against the landlord absent fraud, constructive fraud, or interference with possession. 3. The doctrine of independent covenants, such that breach of part of the agreement by one party, as failure to repair or failure to pay rent, does not excuse failure to perform by the other party. 4. The lack of doctrine corresponding to the contractual obligation to mitigate damages on breach by the other party." (Footnotes omitted.)

9. *See generally, e.g.*, Blum & Dunham, *Slumlordism as a Tort—A Dissenting View*, 66 MICH. L. REV. 451 (1968); Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968); Comment, *Tenants' Remedies in the District of Columbia: New Hope for Reform*, 18 CATHOLIC U.L. REV. 80 (1968).

10. *E.g.*, Ames v. Brandvold, 119 Minn. 521, 523, 138 N.W. 786, 787 (1912), provides a summary of the common law rule relating to tort liability of the landlord: "[W]here there is no agreement by the landlord to repair the demised premises, and he is not guilty of any fraud or concealment as to their safe condition, and the defects in the premises are not secret, but obvious, the tenant takes the risk of their safe occupancy, and the landlord is not liable to him, or to any person entering under his title or by his invitation, for injuries sustained by reason of their unsafe condition."

11. *E.g.*, Saunders v. First Nat'l Realty Corp. 245 A.2d 836 (D.C. Ct. App. 1968); Fisher v. Collier, 143 So. 2d 710 (2d D.C.A. Fla. 1962).

12. *E.g.*, Peters v. Kelly, 98 N.J. Super. 441, 237 A.2d 635 (App. Div. 1968).

the right toterminate the lease and quit the premises.[13] The inequities existing in the common law of landlord and tenant become more obvious when considered in light of present shortages of low and moderate income rental units. It is often economically or physically impossible for the tenant to find other housing; consequently, the tenant is forced to live at the landlord's mercy without adequate protection at common law.[14]

Legislation

Generally, legislatures have met the challenge of inadequate housing with far less resistance than the common law.[15] During the late 1800's state legislatures enacted tenement house statutes to establish minimum housing standards. By mid-twentieth century, such statutes had evolved into the elaborate housing codes familiar today.[16] However, administrative enforcement of the codes was ineffectual, as demonstrated by the quantity of substandard housing allowed to persist.[17] In response to the failure of housing codes to eliminate substandard housing, various states have passed statutes designed to insure enforcement of code provisions. Several statutes, for example, authorize courts to appoint receivers to collect rents and utilize the income to bring rental units up to code standards; if the income is insufficient to finance the repairs, the receiver may obtain state funds to effect the necessary repairs and bill the landlord for costs.[18] In practice, however, receivership statutes have accomplished little to reduce substandard housing.[19] Statutes in other states authorize welfare departments to withhold rent payments of welfare recipients until their housing meets minimum code standards.[20] The Illinois statute, for instance, authorizes the welfare agency to withhold a portion of the rent as an administrative penalty for failure to comply with code provisions.[21]

13. Note, *supra* note 6, at 1371. Termed "constructive eviction," this right to quit the premises was narrowly defined at common law. *See* text accompanying notes 126-134 *infra*.

14. *See* Kay v. Cain, 154 F.2d 305 (D.C. Cir. 1946); O'Callaghan v. Waller & Beckwith Realty Co., 15 Ill. 2d 436, 155 N.E.2d 545 (1959); Kuzmiak v. Brookchester, 33 N.J. Super. 575, 111 A.2d 425 (App. Div. 1955).

15. Note, *supra* note 9, at 1371. Several factors that hamper proper enforcement of housing laws are: lack of adequate administrative resources, overlapping jurisdiction of enforcement agencies, lax judicial enforcement, and relocation problems resulting from strict code enforcement. *Id.*

16. *Id.*

17. Note, *supra* note 4, at 314-23.

18. CONN. GEN. STAT. ANN. §19-347b (Supp. 1965); ILL. ANN. STAT. ch. 24, §§11 to 31-2 (Smith-Hurd Supp. 1967); MASS. GEN. LAWS ANN. ch. III, §127H, J (1965); MICH. COMP. LAWS ANN. §125.535 (Supp. 1969); N.J. STAT. ANN. §§2A:42-79 to 2A:42-82 (Supp. 1968).

19. Note, *supra* note 6, at1372 n.22.

20. *E.g.*, MICH. COMP. LAWS ANN. §400.14c (1966); N.Y. SOC. WELFARE LAW §143-b (McKinney 1965).

21. ILL. ANN. STAT. ch. 23, §11-23 (Smith-Hurd Supp. 1967) provides: "If the violations are not so corrected . . . the county department or local governmental unit shall deduct 20% of the payments withheld during that period [in which the landlord fails to comply with code provisions] as an administrative penalty."

A common inadequacy of these legislative provisions is that they are enforceable only upon the initiative of some state agency. During recent years awareness has grown that the tenant has a special interest in adequate housing and in preserving the public health and welfare of his community. As a result, tenant-initiated remedies are receiving increased attention as a means of enforcing housing code provisions and are generally thought to be more efficient than state initiated enforcement proceedings.[22]

The earliest forms of tenant-initiated remedies included "repair and deduct" statutes that enable a tenant to withhold rent for the purpose of making necessary repairs.[23] The effectiveness of these statutes is limited in that they often specify the amount of rent that may be withheld by the tenant[24] or require judicial approval before any rent may be withheld.[25] Repair and deduct statutes, nevertheless, can provide some relief to the tenant in substandard housing when only minor repairs are required to conform the premises to minimum standards.

Probably the most effective means of insuring landlord compliance with the codes are statutes that authorize rent withholding by tenants.[26] Generally, these statutes provide that a tenant may bring an action charging his landlord with violations of housing code standards.[27] After a hearing to determine the validity of the charges against the landlord, the court may order that all rents be paid into an escrow fund administered by the court.[28] Such statutes

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22. *See generally* Gribetz & Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254 (1966); Sax & Heistand, *Slumlordism as a Tort*, 65 MICH. L. REV. 869 (1967); Note, note 6 *supra*. *But see* Garrity, *Redesigning Landlord-Tenant Concepts for an Urban Society*, 46 J. URBAN L. 695 (1968). Garrity denigrates the idea of tenant initiated remedies as a means of achieving reform in landlord-tenant law. He calls for broad legislative revisions of basic landlord-tenant concepts as the only effective vehicle for reform.

23. CAL. ANN. CIV. CODE §§1941, 1942 (West 1954); MICH. COMP. LAWS ANN. §125.534 (Supp. 1969); MONT. REV. STAT. §§42-201, -202 (1947); N.D. CENT. CODE §§47-16-12 to -13 (1960); OKLA. STAT. ANN. tit. 41, §§31, 32 (1954); S.D. CODE §§38.0409, .0410 (1939).

24. *E.g.*, CAL. ANN. CIV. CODE §1942 (West 1954) provides: "If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the cost of such repairs do not require an expenditure greater than one month's rent . . . ."

25. MICH. COMP. LAWS ANN. §125.534 (Supp. 1969) provides that upon application to the court "the court may authorize the occupant to correct the violation and deduct the cost thereof from the rent upon such terms as *the court determines* to be just." (Emphasis added.)

26. MASS. GEN. LAWS ANN. ch. III, §§127F, 127H (Supp. 1969); MICH. COMP. LAWS ANN. §§125.530, .534 (Supp. 1969); N.Y. REAL PROP. ACTIONS §755 and art. 7A (McKinney 1968); PA. STAT. ANN. tit. 35, §1700-1 (Supp. 1969); R.I. GEN. LAWS ANN. §45-24.2-11 (Supp. 1968). However, only Massachusetts, Michigan, and New York allow rent withholding to be initiated by the tenant without having to rely upon and bring his action through the housing authority.

27. *E.g.*, MASS. GEN. LAWS ANN. ch. III, §127H (Supp. 1969).

28. MASS. GEN. LAWS ANN. ch. III, §127F. (Supp. 1969) provides: "If the court finds after hearing that the facts are as alleged in said petition, it may by written order authorize the petitioner or any other tenant affected to make rental payments then due or thereafter becoming due to the clerk of the court . . . ."

have been held to be constitutional exercises of the state's police power.[29] However, statutes that make the landlord's noncompliance with housing code standards an absolute defense in an action to evict for nonpayment of rent have been held unconstitutional as violations of the due process provisions of the fifth and fourteenth amendments.[30]

Legislative reform of landlord-tenant law provides an effective step toward alleviating many severe housing problems. One immediately obvious difficulty, however, is that only a handful of states have enacted such legislation. Furthermore, existing legislation is limited in scope; it is oriented toward forcing compliance with housing codes, but does little to ameliorate the economic hardships caused by exorbitant rental rates or the insecurity caused by the landlord's power to evict his tenants arbitrarily. Tenant unions provide a practical means whereby the tenant may initiate enforcement of housing codes and, at the same time, protect against arbitrary evictions and rent increases.

Landlord-Tenant Law in Florida

Under present Florida law, there are no statutory provisions offering the tenant remedies such as repair and deduct, court appointed receiverships, or rent withholding.[31] Basically, the Florida tenant has little more than the slight protection afforded by common law. Housing and health codes, where they exist, are intended to offer some protection, but the benefits of these provisions are vitiated by the possibility of retaliatory eviction.

Chapter 83 of the Florida Statutes, the basic landlord-tenant statute, strongly favors the interests of the landlord. For instance, certain sections provide for distress for rent[32] and removal of tenants,[33] but no sections authorize rent abatement, repair and deduct, or protect the tenant from retaliatory eviction. The provision that authorizes the termination of a tenancy at will[34] applies to both parties and the language does purport to grant certain rights to the tenant. However, the circumstances that surround such tenancies, coupled with the unequal bargaining power of the tenant, indicate that the statute actually offers the landlord greater protection than the tenant.

There are, however, various statutory provisions ameliorating the harsh

29. *E.g.*, Himmel v. Chase Manhattan Bank, 47 Misc. 2d 93, 262 N.Y.S.2d 515 (Civ. Ct. City N.Y. 1965).

30. *E.g.*, Trozze v. Drooney, 35 Misc. 2d 1060, 232 N.Y.S.2d 139 (Binghamton City Ct. 1962) declaring a portion of the New York Social Welfare Law to be void as a violation of due process in that it destroyed the contract rights of the landlord.

31. There are presently two bills before the Florida legislature that would greatly change the nature of Florida landlord-tenant law. House bills 3731 and 4121 would authorize the tenant to withhold rent and pay the amounts due into court until existing violations were corrected. The bills would further protect the tenant from retaliatory eviction by the landlord.

32. FLA. STAT. §§83.11-.19 (1967).

33. FLA. STAT. §§83.20-.251 (1967).

34. FLA. STAT. §83.03 (1967).

effect of the common law. Chapter 82 of the Florida Statutes protects the tenant from forcible entry and unlawful detainer. Furthermore, the statute prescribes the procedure for dispossession of tenements unlawfully held.[35] Since this procedure involves a court proceeding, it is doubtful that, for practical reasons, any lawyer should advise a client-landlord to attempt a peaceable entry and dispossession of his tenant.[36] Thus, in practice at least, a Florida landlord's right of reentry is not unqualified. Generally, the right to reenter should be a matter of contractual agreement since there is judicial reluctance to allow self-help by the landlord.[37]

The need for statutory reform in Florida has been recognized,[38] but the motivation apparently arises more from a desire to obtain consistency among the statutes and courts than to improve the tenants' legal status.[39] Absent statutory reform, tenants in Florida must rely upon the courts to protect their rights. While existing decisions fail to reflect any marked willingness to depart from common law doctrines, tenants have been afforded limited relief under certain conditions.

In rare instances, for example, Florida courts have allowed tenants to make necessary repairs and deduct the expenditure from their rent. In *Masser v. London Operating Co.*,[40] the landlord had agreed to make repairs but had failed to do so; and as a result, the premises became untenable. The court held that after proper notice to the landlord, the tenant could make the necessary repairs and deduct the cost from his rent. However, repair and deduct is not available to the normal residential tenant who usually lacks an express covenant to repair.

McClosky v. Martin[41] suggests there may be circumstances under which Florida courts will allow rent withholding. The court noted that absent express covenants to the contrary, a lease of realty carries an implied covenant of quiet enjoyment. In *McClosky* the landlord had so interfered with the tenant's right to quiet enjoyment that the court allowed the tenant to withhold rent as long as the interference continued.[42] The language of the court indicates that the commercial setting of the lease in question may have prompted the result reached; however, it would seem possible that a residential tenant might suffer such a degree of interference that a court would allow rent withholding.[43] Apparently no such result has been attained to date.

Relief afforded Florida tenants has been slight, and the need for reform in Florida is obvious. Yet reform is a time-consuming process that requires

35. FLA. STAT. §§82.04-.20 (1967).

36. Barnett, *When the Landlord Resorts to Self-Help: A Plea for Clarification of the Law in Florida*, 19 U. FLA. L. REV. 238, 270-71 (1966).

37. *E.g.*, Van Hoose v. Robbins, 165 So. 2d 209 (2d D.C.A. Fla. 1964).

38. *See* Boyer & Grable, *Reform of Landlord-Tenant Statutes to Eliminate Self-Help in Evicting Tenants*, 22 MIAMI L. REV. 800 (1968).

39. *See generally* Barnett, note 36 *supra*.

40. 106 Fla. 474, 145 So. 79 (1932).

41. 56 So. 2d 916 (Fla. 1951).

42. *Id.* The landlord had erected a billboard that substantially interfered with the tenant's business use of the premises.

43. *See* discussion of constructive eviction in text accompanying notes 126-134 *infra*.

the patience of those with the most immediate need. In the interim, the Florida tenant is faced with a body of law that is weighted against him and courts that have not demonstrated a willingness to protect his interests.[44]

Tenant unions may provide means for the Florida tenant to obtain some measure of relief for himself and his family and eventually enjoy a better life.

THE TENANT UNION CONCEPT

Definition and Purpose

A tenant union is "an organization of tenants formed to bargain collectively with their landlord for an agreement defining the parties' mutual obligations."[45] Tenants are motivated to join together in tenant unions because of high rent, inferior building maintenance, bad social conditions, and other grievances between the landlord and tenant. Basically, tenant unions are the product of tenants' desire to reduce costs and to improve the quality of their housing.[46] Like its model, the labor union, the tenant union joins individuals into a cohesive association with the purpose of negotiating an agreement with the landlord that defines the obligations of both parties and provides procedures to resolve disputes.[47] Studies conducted by the American Arbitration Association for the Office of Economic Opportunity indicate that tenant unions are being formed throughout the country.[48] Contrary to popular notions, they are arising in middle-income neighborhoods as well as in the ghetto.[49] If successful, tenant unions may have an important impact on traditional landlord-tenant relations; however, to date, tenant unions have attracted relatively scant attention from either the news media or lawyers who may ultimately have to deal with them.[50]

History of Tenant Unions

The tenant union concept is not new. Severe economic depression and housing shortages triggered the formation of tenant groups as early as the

44. *See, e.g.*, Safer v. City of Jacksonville, 237 So. 2d 8 (1st D.C.A. Fla. 1970). The Court held the installation of lavatories, hot water heaters, and convenience electrical outlets, as required by the Jacksonville Housing Code, was unreasonable and unconstitutional confiscation of property. *See also* Comment, *Housing Codes: Court Determination of Reasonableness*, 23 U. FLA. L. REV. 195 (1970).

45. Note, *Tenant Unions: An Experiment in Private Law Making*, 2 HARV. CIV. LIB.-CIV. RIGHTS L. REV. 237, 238 (1966) *reprinted in* N.Y.U. LAW SCHOOL, PROJECT OF SOCIAL WELFARE LAW, HOUSING FOR THE POOR: RIGHTS AND REMEDIES 100-01 (Supp. No. 1, 1967).

46. Coulson, *The Tenant Union—New Institution or Abrasive Failure?*, 14 PRAC. LAW., April 1968, at 23.

47. Note, *supra* note 6, at 1370.

48. L. AURBACH, LEGAL RIGHTS AND HOUSING WRONGS 62-69 (1967) (draft of a report of a study conducted by the American Arbitration Ass'n under a grant from the Office of Economic Opportunity).

49. *See* text accompanying notes 177-180 *infra*.

50. Coulson, note 46 *supra*.

1890's.[51] Following World War I acute housing shortages, especially in metropolitan areas, prompted the formation of tenant groups that in many cases developed into large scale organizations during the depression.[52] These early efforts at tenant unionization were oriented toward the alleviation of specific grievances and tended to be short-lived.[53]

The massive rent strikes led by Jesse Gray in New York in the winter of 1963 marked the decline of the single-issue-oriented tenant union and the rise of the tenant union as conceived today.[54] One important distinction should be made at this point: "rent strike" is not synonymous with "tenant union." The crucial distinction between rent strike activities and activities of tenant unions today is that a tenant union is meant to govern the conduct of both the landlord and the tenant. A rent strike, by contrast, represents an effort to force the landlord to comply with some specific demand.[55] The new tenant union's primary emphasis is on collective bargaining through "a stable organization dealing directly with the landlord on a continuing basis."[56] The goal of member-tenants is not only better housing for themselves but also an improvement in the economic, social, and cultural conditions for an entire area.[57] The considerable growth of tenant unions in recent years represents the convergence of two fairly recent developments: an increased awareness and appreciation of the positive gains that can be realized by tenant participation in efforts to improve housing conditions and the civil rights movement, with its concomitant war on poverty.[58] The many obstacles involved in organizing the nation's poor to deal effectively with their many problems required an issue that could catch and hold their interest. Housing provided an obvious choice.[59]

Legal Status

In the absence of a corporate charter the legal status of a tenant union is that of an unincorporated association.[60] Although most states provide for the formation of nonprofit corporations,[61] the existence of legal obstacles in some states and the fact that many poor tenants distrust the legal aspects of incorporation often make it unfeasible for the tenant union to form a non-

51. Piven & Cloward, *Rent Strike*, NEW REPUBLIC, Dec. 2, 1967, at 11.
52. Note, *supra* note 6, at 1370.
53. *Id.*
54. Note, *supra* note 45, at 102.
55. *Id.*
56. Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368, 1370 (1968).
57. CCH POVERTY L. REP. ¶2500, at 3471 (1969).
58. Note, *supra* note 56, at 1370.
59. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT at 257 (March 1, 1968); Note, note 56 *supra*.
60. Note, *Tenant Unions: Legal Rights of Members*, 18 CLEV.-MAR. L. REV. 358, 359 (1969).
61. *E.g.*, FLA. STAT. §617 (1967).

profit corporation.[62] The legal status of the tenant union is extremely important since the landlord may be understandably reluctant to enter an agreement with an unincorporated association.[63] Furthermore, such a status may create problems relating to the contractual rights and duties as well as the tort liability of the tenant union members, and, to some extent, it may affect the right of the tenant union to employ legal counsel.[64]

The term "unincorporated association" may describe widely diverse groups that range from large and powerful labor unions to local garden clubs.[65] At common law, an unincorporated association was not considered a separate entity and therefore had no status distinct from persons composing it.[66] The common law further provided the generally accepted notion that unincorporated associations could not enter contracts or be parties to any litigation.[67] In essence, they represented legal nonentities,[68] and at common law the generally accepted view is that a nonentity can have no agents.[69] If the association is not recognized as a legal entity by statute, it is difficult to maintain that an agent can bind it to an agreement.[70] Thus, under common law the agent who purports to act on behalf of an unincorporated tenant union actually represents only himself or those who have expressly authorized his conduct.[71]

Many states[72] and the federal government[73] have enacted procedural devices authorizing an action by and against unincorporated associations as legal entities. However, the plaintiff must still prove that the agent was authorized to act on behalf of the association.[74] Membership in itself does not constitute authorization, but where the purpose of the association is such that membership may fairly imply authorization, the association as a whole may be held liable.[75] Given the specialized purpose of entering into a collective bargaining agreement with the landlord,[76] it would seem that, once in court, the landlord could bind the members of the tenant union to the terms of a collective bargaining agreement. Similarly, tenant unions, even in jurisdictions in which such procedural devices have not been enacted, may enforce their rights against the landlord on an estoppel principle. One

62. HOUSING AND LAW PROJECT, HANDBOOK ON HOUSING LAW, ch. I, at 36-37 (Earl Warren Institute, U. Cal., Berkeley (1969)).

63. Note, *supra* note 60, at 361-64.

64. *Id.*

65. Note, *Hazards of Enforcing Claims Against Unincorporated Associations in Florida*, 17 U. FLA. L. REV. 211, 212 (1964).

66. Hunt v. Adams, 111 Fla. 164, 166, 149 So. 25 (1933).

67. *See generally* Note, note 60 *supra.*

68. Note, *supra* note 65, at 212.

69. I.W. Phillips & Co. v. Hall, 99 Fla. 1206, 128 So. 635 (1930).

70. *Id.* at 1210-13, 128 So. 635, at 637.

71. Note, *supra* note 60, at 362.

72. *E.g.*, N.Y. GEN. ASS'NS LAW §13 (McKinney 1969); OHIO REV. CODE §1745.01 (1969).

73. FED. R. CIV. P. 17b.

74. *E.g.*, Prin v. DeLuca, 218 N.Y.S.2d 761, 763 (Sup. Ct. 1961).

75. S. WRIGHTINGTON, THE LAW OF UNINCORPORATED ASSOCIATIONS AND BUSINESS TRUSTS §64, at 386 (2d ed. 1923).

76. Note, *supra* note 45, at 101.

who deals with an unincorporated association as an entity capable of transacting business and consequently receives valuable consideration may be estopped from denying his capacity to enter into a contract.[77]

Once the landlord has acceded to a collective bargaining agreement he faces the particular problem of getting the unincorporated tenant union into court. In the absence of some procedural device by which the landlord can bring an action against the union as an entity, he is confronted with the prospect of having to serve each member of the tenant union individually.[78] The hazard such a landlord might face in dealing with an unincorporated tenant union has been well stated:[79]

> The unincorporated association can suddenly develop acute schizophrenia, abandoning the single personality it assumed when signing an agreement and dissolving into as many individual personalities as there are members.

It is not surprising, therefore, that landlords may be reluctant to deal with unincorporated tenant unions.[80] Presently, Florida offers no procedural provisions that would authorize a landlord to bring an action against an unincorporated tenant association.[81] Obviously, a need for reform exists in Florida and other jurisdictions not only to facilitate bargaining between landlords and tenant unions, but also to protect the rights of the landlord who is forced to the bargaining table by a powerful group of unincorporated tenants.

Potential Operation of Tenant Unions

Overcoming the Landlord's Superior Position

Landlords have been generally unreceptive to efforts of tenant unions to organize.[82] One landlord stated: "The union is just trying to put me out of business. There is nothing for me in dealing with the union."[83] However, not all landlords share this view, and many realize there are positive gains to be realized for both parties in the collective bargaining process.[84] For the tenant there is the financial security offered by a reasonable rent scale and the psychological security of knowing he cannot be evicted without just cause. He also believes his housing will be maintained at a level to insure

77. *E.g.*, State Farm Mut. Auto. Ins. Co. v. Mackechnie, 114 F.2d 728, 735 (8th Cir. 1940).

78. Note, *supra* note 65, at 222-29.

79. *Id.* at 223.

80. *See generally* Note, note 56 *supra*.

81. Florida has taken a piecemeal approach to this problem. Special statutes allow an action against specific types of unincorporated associations. *E.g.*, FLA. STAT. §447.11 (1967) authorizes an action to be brought against a labor union as a legal entity.

82. Coulson, note 46 *supra*.

83. L. AURBACH, *supra* note 48, at 69.

84. *Id. See* note 198 *infra*.

his health, safety, and general well-being in the community. For the landlord there is the economic benefit that accrues from having a stable tenant population that takes an active interest in maintaining the condition of its building.[85] Studies indicate that vandalism, the source of some of the landlord's greatest financial losses, is often greatly reduced in buildings inhabited by organized tenants.[86] In fact, many collective bargaining agreements make the union liable for the conduct of the tenants.[87]

Despite the benefits that may accrue to the landlord, the attitude that tenant unions should be discouraged is persistent. Techniques employed to discourage organization include intimidation, partial rehabilitation of the premises, and retaliatory eviction. In order to realize its goal of collective bargaining the tenant union must be apprised of its legal rights; it must organize as many tenants as possible to overcome the superior position of the landlord and force him to the bargaining table.[88]

Intimidation. Because of the expense and inconvenience involved in eviction proceedings, many landlords rely instead upon various methods of intimidation such as threats of criminal action and reduced services in an effort to urge tenant union sympathizers to move out.[89] If tenants are ignorant of their legal rights and not well organized, such methods are usually effective in discouraging tenant union activity. However, the tenant is not without a remedy to overcome such tactics. In one case a Chicago landlord turned off the gas in the apartment of a mother of four who was active in organizing a tenant union. The tenant obtained an injunction to force resumption of the services guaranteed under the lease agreement. When the landlord refused to comply with the order he was sentenced to six months imprisonment.[90] This case illustrates that a landlord is not free to intimidate his tenants by illegal acts.[91] A tenant union well apprised of the legal rights of its members can effectively prevent this type of action.

Partial Rehabilitation. Partial rehabilitation of the premises is a particularly effective means to thwart the organizational efforts of tenant unions. A landlord simply performs a few minor repairs or adds an extra coat of paint, overlooking serious and substantial maintenance problems. Once the repairs are made, many tenants fail to recognize the continuing need for tenant union activity and begin to lose interest. In this respect the problem

85. Coulson, *supra* note 46, at 24-27.

86. *Id.*

87. HOUSING AND LAW PROJECT, note 62 *supra*. The sample collective bargaining agreement contained in the Handbook provides that the tenant union will assume the obligation to pay for damages done to the premises beyond that caused by reasonable wear and tear.

88. *See generally* Coulson, *The Tenant Union—New Institution or Abrasive Failure?*, 14 PRAC. LAW., April 1968, at 23; Note, note 56 *supra*.

89. Coulson, *supra* note 88, at 26.

90. LAW IN ACTION, Dec. 1968, at 11.

91. *See generally* TENANTS' RIGHTS: LEGAL TOOLS FOR BETTER HOUSING (1967) (a report on a national conference on legal rights of tenants sponsored by the Department of Housing and Urban Development, Department of Justice, and the Office of Economic Opportunity).

is similar to that facing the labor union organizer who has seen potential membership vanish as the result of a slight pay increase.[92] Since this tactic is most likely to be employed during the early stages of unionization when the tenants are not fully committed, it can be one of the landlord's most useful tools to prevent the formation of an active and militant tenant union. To prevent the landlord's success, it is essential that tenant union leaders inform active and potential members of the possibility of partial rehabilitation and obtain their pledge not to accept it in lieu of the major rehabilitation that the union seeks.

Retaliatory Eviction. The most effective weapon employed by landlords to discourage unwelcome activities among their tenants is retaliatory eviction. The classical case of retaliatory eviction arises when a tenant becomes dissatisfied with the condition of his housing and reports existing violations to the local housing authorities or supports efforts to organize the tenants in his building. Generally, the tenant has only a month-to-month or weekly tenancy rather than a written lease.[93] As a result the landlord may give proper notice of termination without stating any reason. If the tenant refuses to quit the premises the landlord may then bring an action to evict. The immediate question is whether the landlord should be allowed to evict the tenant in retaliation for lawful conduct.

The legality of tenant union participation would seem to be beyond question. The United States Supreme Court, in *Amalgamated Utility Workers v. Edison Co.*,[94] stated that although the National Labor Relations Act[95] recognized the rights of workers to form labor unions for the purpose of collective bargaining, the right to do so was fundamental and existed prior to and independent of the act. By analogy, the right of tenants to organize and bargain collectively with the landlord would also seem to be a fundamental right guaranteed within the penumbra of the first amendment guarantees of free speech and association.[96] Thus, retaliatory action by the landlord in response to tenant union activity would violate the tenants' constitutional rights.

Some states have adopted statutes that prohibit retaliatory evictions;[97] but since most states have no such legislation, the tenant must challenge the action on constitutional and common law grounds. The various defenses to an eviction action in retaliation for the tenants' lawful conduct were put forth in *Edwards v. Habib*.[98] *Edwards* arose out of an eviction that the tenant claimed was retaliation for reporting housing code violations. The first question considered by the court was whether the eviction would interfere with the first amendment rights of the tenant, the required state action

92. Coulson, *supra* note 88, at 26.
93. *Id.*
94. 309 U.S. 261 (1940).
95. 29 U.S.C. §§151 *et seq.* (1935).
96. Note, *supra* note 60, at 362-63.
97. *E.g.*, MICH. COMP. LAWS ANN. §§600.5634-.70 (Supp. 1969).
98. 397 F.2d 687 (D.C. Cir.) *cert. denied*, 393 U.S. 1016 (1968).

being the use of state courts to enforce the eviction. While the court indicated an inclination to accept this theory, it did not rule on the constitutional grounds. The second argument concerned the right to report violations of the law as an independent and fundamental right arising out "of the creation and establishment by the constitution itself of a national government, paramount and supreme within its sphere of action."[99] Again the court failed to pass upon this point, but relied instead upon the third argument that retaliatory evictions would "clearly frustrate the effectiveness of the housing code as a means of upgrading the quality of housing" and would therefore be violative of public policy.[100]

A Florida court has suggested its acceptance of the public policy rationale of *Edwards*, but added an additional burden upon the tenant who raises the defense of retaliatory eviction. In *Wilkins v. Tebbetts*[101] the court required he tenant to prove not only that the eviction was retaliatory but also that the alleged violations did in fact exist. Although such a burden may not be difficult to prove, it seems unnecessary since the purpose of the defense is "to facilitate city enforcement by encouraging reporting of alleged violations."[102]

Because these cases have failed to meet the constitutional issues they cannot be considered absolute authority prohibiting the eviction of tenants for organizing and participating in tenant unions. In *Thorpe v. Housing Authority of Durham*[103] the tenant maintained she was being evicted for her organizational activities with a tenant union. The Supreme Court held for the tenant, but avoided the constitutional issues by ruling that where a project receives federal funds, it is essential that evictions be conducted in accordance with standards prescribed by the Department of Housing and Urban Development.[104] In at least one unreported opinion, however, a court has addressed the constitutional issue. In *Tarver v. G. & C. Construction Corp.*[105] the court held an eviction in retaliation for constitutionally guaranteed conduct was violative of rights guaranteed the tenant under the first and fourteenth amendments, and the power of state courts could not be invoked to enforce such an eviction.

Moreover, in *Hosey v. Club Van Courtlandt*[106] the tenant sought an injunction to restrain a landlord from instituting a state eviction action, contending that the eviction was retaliatory and therefore an unconstitutional violation of the tenant's civil rights. The court, following the *Tarver* rationale, held that the first and fourteenth amendments require a state

99. *In re* Quarles & Butler, 158 U.S. 532, 536 (1895).

100. Edwards v. Habib, 397 F.2d 687, 701 (D.C. Cir.), *cert. denied*, 393 U.S. 1016 (1968).

101. 216 So. 2d 477 (3d D.C.A. Fla. 1968), *cert. denied*, 222 So. 2d 753 (Fla. 1969).

102. HOUSING AND LAW PROJECT, *supra* note 62, ch. III, at 7.

103. 386 U.S. 670 (1969).

104. HUD Circular 2-7-67 provides: "It is essential that no tenant be given notice to vacate without being told by the Local Authorities, in a private conference or other appropriate manner, the reasons for the eviction, and given an opportunity to make such reply or explanation as he may wish."

105. Civil No. 64 C 2945 (S.D.N.Y. 1969).

106. 299 F. Supp. 501 (S.D.N.Y. 1969).

court to allow the defense of retaliatory eviction based upon a deprivation of constitutional rights. If the state precludes such a defense, the federal court should enjoin the proceeding. In *Hosey* the injunction was not issued because New York law did not preclude the use of the retaliatory eviction defense. Nevertheless, this case clearly upholds the proposition that tenants may not be evicted in retaliation for tenant union activity, which is guaranteed under the first and fourteenth amendments.[107]

A well organized tenant union, aware of its legal rights and represented by competent legal counsel, can successfully overcome a landlord's superior position. Of course, an individual tenant retains the same legal rights as does a member of a tenant union. But when the individual tenant asserts his rights he only helps himself and his family overcome some specific grievance. On the other hand, when the tenant union overcomes the superior position of the landlord by asserting the collective rights of its members, it moves one step closer to the collective bargaining table and the eventual improvement of living conditions in an entire area.[108]

Toward the Collective Bargaining Agreement

Rent Withholding. The rights presently guaranteed to a tenant union are empty indeed if the tenant union is unable to bargain effectively with the landlord. The problem is not one of cooperation or consent, but one of power. Landlords typically will do all they can to prevent union activity and collective bargaining.[109] In most cases, however, the landlord may be forced to the bargaining table by a strong union. One particularly effective tactic used for this purpose is the threat of rent withholding. Many slumlords are trapped by fixed operating costs on their property and delayed rent payments may subject them to heavy losses.[110]

In states that authorize rent withholding by statute,[111] the threat to the landlord is very real, especially in slum areas where tenants have little trouble instituting a "rent strike." However, most states either lack such legislation or existing legislation is insufficient. As a result the tenant union must rely upon the common law to establish the right to withhold rent. Although traditional common law principles generally discourage the right to withhold rent,[112] "several established legal theories and modern cases can be pieced together to make a strong case for allowing rent withholding, *without* trying to break new ground with novel theories which might astound the judiciary."[113]

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107. HOUSING AND LAW PROJECT, *supra* note 62, ch. III, at 6. The Handbook contains a detailed analysis of the problems posed by retaliatory eviction. The materials are designed primarily to be used by legal services attorneys representing low income tenants. *Id. Preface.*

108. *See* text accompanying notes 56-59 *supra.*

109. *Cf.* NATIONAL TENANTS ORGANIZATION, TENANT'S OUTLOOK, March 1970, at 4, col. 3.

110. Coulson, *supra* note 88, at 26.

111. *See* text accompanying notes 26-30 *supra.*

112. *See* text accompanying notes 7-14 *supra.*

113. HOUSING AND LAW PROJECT, HANDBOOK ON HOUSING LAW, ch. II, at 13-45 (Earl

The first is the illegal contract theory, essentially stating that contracts executed in violation of statutory prohibitions designed for police and other regulatory purposes are void and unenforceable by the courts.[114] In *Brown v. Southall Realty Co.*[115] a landlord leased an apartment with the knowledge that the premises violated local housing regulations.[116] In an action to recover rent the court held against the landlord, reasoning that the lease agreement was an illegal contract. The court held that a contract made in violation of a statutory prohibition is void and confers no rights upon the wrongdoer. Therefore, the tenant owed no rent under the lease agreement.

A similar justification for nonpayment of rent arises if the landlord illegally performs his obligations under the lease agreement. In *Saunders v. First National Realty Corp.*[117] the tenant was unable to prove the code violations existed at the time the lease agreement was executed and was therefore unable to rely upon the illegal contract theory. The tenant proceeded on the theory that compliance with housing regulations is a continuing legal duty imposed upon the landlord, and failure to comply amounted to illegal performance of his obligations under the lease agreement. Despite considerable support for this theory,[118] the court held against the tenant. The case is presently on appeal to the Court of Appeals for the District of Columbia.[119]

A third theory supporting nonpayment of rent involves a failure of consideration that may excuse the tenant from his obligations under the lease agreement. This theory rests upon the proposition that the landlord has a contractual obligation to comply with housing regulations, with the tenant's obligation to pay rent being conditioned upon such compliance.[120] Since all laws in existence when a contract is entered into become incorporated into the contract,[121] this theory assumes that modern housing codes have abrogated the common law so that every lease includes a covenant of habitability and a duty to maintain the premises in good repair at all times; a failure by the landlord to comply with this duty amounts to a substantial interference with possession and excuses the tenant from his obligation to pay rent.[122] This theory, however, assumes that covenants in a lease are dependent.[123] The weight of authority, however, indicates that courts are still unwilling to adopt this proposition and continue to uphold the common law doctrine that covenants in a lease are independent. Therefore, the

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Warren Institute, U. Cal., Berkeley (1969) (sets out sample briefs to support each of the theories justifying rent withholding).

114. *Id.* at 4, 13-16.

115. 237 A.2d 834 (D.C. Ct. App. 1968).

116. DISTRICT OF COLUMBIA HOUSING REGULATIONS §2304 (1955).

117. 245 A.2d 836 (D.C. Ct. App. 1968).

118. *See* HOUSING AND LAW PROJECT, *supra* note 113, ch. II, at 5, 17-19.

119. *Id.* EDITOR'S NOTE: The case was reversed, 428 F.2d 1071 (D.C. Cir. 1970).

120. *Id.* at 5, 20-32.

121. Von Hoffman v. City of Quincy, 71 U.S. 535, 550 (1866).

122. HOUSING AND LAW PROJECT, *supra* note 113, ch. II, at 20-32; Schoshinski, *Remedies of the Indigent Tenant: Proposal for Change*, 54 GEO. L.J. 519 (1966).

123. HOUSING AND LAW PROJECT, *supra* note 113, ch. II, at 27.

landlord's failure to fulfill his obligations under the lease does not necessarily excuse the tenant from paying rent as long as he continues to occupy the premises.[124] Nevertheless, the tenant may reach substantially the same result by waiting for the landlord to bring an action to recover rent and then plead his own damages by way of set-off, recoupment, or counterclaim.[125]

A fourth theory is constructive eviction,[126] an American addition to the common law.[127] In order to establish constructive eviction the tenant must show that the landlord's intentional act or omission in violation of an express or implied covenant caused a material interference with the tenant's beneficial use and enjoyment of the premises and resulted in the tenant's vacating the premises.[128] Underlying this theory is the common law covenant of quiet enjoyment, which is implied in every lease.[129] Furthermore, it may be argued that housing codes, where applicable, have abrogated the common law so that every lease includes a covenant of habitability.[130] In either case it is generally felt that failure to provide essential services (such as adequate plumbing and heating), failure to maintain the premises in a habitable condition, or failure to provide for the health and safety of the tenant are sufficient to constitute a material interference with the tenant's beneficial use and enjoyment of the property, thereby excusing him from his liability to pay rent.[131] The difficulty with this theory arises from the requirement of abandonment. At common law the tenant could not claim constructive eviction unless he quit the premises; the requirement was based upon the rationale that if the premises were indeed uninhabitable, the tenant would vacate.[132] Courts have not, however, been uniformly inflexible in this regard. In cases where there has been a clear showing that the tenant would vacate but for the unavailability of another dwelling, some courts have held the abandonment requirement to be an unreasonable burden upon the tenant and thus have allowed the defense of constructive eviction.[133] In light of the present shortages of adequate low income housing, it would seem that the rationale as applied in these cases would often exempt the slum tenant from the abandonment requirement. However, courts generally exhibit a

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124. AMERICAN BAR FOUNDATION MODEL RESIDENTIAL LANDLORD-TENANT CODE (Tent. Draft) *Introduction* to art. II, pt. II (1969).

125. *Id.*

126. HOUSING AND LAW PROJECT, *supra* note 113, ch. II, at 5, 33-37.

127. According to AMERICAN BAR FOUNDATION, MODEL RESIDENTIAL LANDLORD-TENANT CODE (Tent. Draft) Commentary to §2-205, at 43 (1969), constructive eviction was first asserted in Dyett v. Pendleton, 8 Cow. 727 (N.Y. 1826).

128. AMERICAN BAR FOUNDATION, note 124 *supra*, commentary to §2-205, at 43.

129. Fifth Ave. Bldg. v. Kernochan, 221 N.Y. 370, 117 N.E. 579 (Ct. App. 1917).

130. Schoshinski, note 122 *supra.*

131. HOUSING AND LAW PROJECT, *supra* note 113, ch. II, at 33-37.

132. Schoshinski, note 122 *supra.*

133. *E.g.*, Majen Realty Corp. v. Glotzer, 61 N.Y.S.2d 195 (N.Y. Mun. Ct. 1946). *But see* Gombo v. Martise, 44 Misc. 2d 239, 253 N.Y.S.2d 459 (Sup. Ct. 1964), *reversing* 41 Misc. 2d 475, 246 N.Y.S.2d 750 (Cir. Ct. N.Y. 1964), in which the court refused to follow the rationale of *Majen.*

marked unwillingness to do away with the abandonment requirement.[134]

Because of the problems imposed by the abandonment requirement in constructive eviction, proceedings on the theory of partial actual eviction may be more successful in some cases.[135] Generally, the eviction of a tenant from a portion of the leased premises will suspend the obligation to pay rent until the premises are restored.[136] A recent case held that a landlord's failure to provide proper ventilation denied the tenant the full use and benefit of the rented premises and excused him from his obligation to pay rent.[137] The court stated that "without breathable air the [tenant] has not been afforded what the Code exacts and that legally he has been actually and partially evicted."[138] By analogy, it would seem that where a landlord violates code provisions, such as those requiring adequate plumbing and heating, the tenant could claim an actual partial eviction caused by the landlord's failure to comply with local ordinances and regulations.[139]

Finally, the tenant might rely upon the equitable doctrine of "clean hands" to justify his failure to pay rent. Although this doctrine generally has not been extended to landlord-tenant relations, it is uncomplicated and may appeal to some courts. Essentially, the theory rests upon the proposition that since the landlord has violated the housing codes, he is guilty of criminal conduct. His hands are unclean, and therefore he should be denied the equity powers of the court to enforce his claim.[140]

It should be noted that if rent withholding is upheld on any of these grounds, the tenant is relieved from the obligation to pay any rent at all. In contrast, statutory authorizations for rent withholding require the tenant to pay rent into an escrow fund, either for distribution to the landlord when he complies with code standards or to be used by the court to effect repairs.[141] Of course, paying no rent at all has many advantages for tenant unions. It is appealing to potential members and therefore facilitates recruiting. It exerts great pressure upon the landlord who knows that if he loses in court,

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134. Schoshinski, note 122 *supra*. Florida courts have adhered to the abandonment requirement. Richards v. Dodge, 150 So. 2d 477 (2d D.C.A. Fla. 1963). Furthermore, the tenant claiming constructive eviction in Florida must give timely notice to the landlord and demand rectification. *Id.* at 483-84.

135. HOUSING AND LAW PROJECT, *supra* note 113, ch. II, at 5, 38-39.

136. *E.g.*, Giraud v. Milovich, 29 Cal. App. 2d 543, 85 P.2d 182 (1938).

137. Barash v. Pennsylvania Terminal Real Estate Corp., 31 App. Div. 2d 884, 298 N.Y.S.2d 153 (1st Dep't 1969). EDITOR'S NOTE: This case was recently reversed. 26 N. Y. 2d 77, 308 N.Y.S.2d 649 (1970). The reversal was predicated on the New York Court of Appeals' finding that the impaired ventilation in this case was constructive eviction rather than actual eviction. The court indicated the law remains that "in the case of actual eviction, even where the tenant is only partially evicted, liability for all rent is suspended." *Id.* at 83, 308 N.Y.S.2d 654. *See also* Leventhal v. Strauss, 197 Misc. 798, 95 N.Y.S.2d 883 (N.Y. City Mun. Ct., 2d Dist. 1950) (interference with light and air resulting from porch built by landlord over tenant's window to be partial actual eviction).

138. *Id.* at 887, 298 N.Y.S.2d 153, at 155.

139. HOUSING AND LAW PROJECT, *supra* note 113, ch. II, at 39.

140. *Id.* ch. II, at 5, 40-44.

141. *See* text accompanying notes 21-25 *upra*.

the money is lost forever. Furthermore, it obviates the need for collecting and accounting for rents during the period of rent withholding.[142]

Nevertheless, it is generally thought to be a better procedure for the tenant union to establish an escrow savings account. The fact that the tenants continue to pay their rent (although to the tenant union rather than to the landlord) can impress the court that the tenants are sincerely interested in obtaining better living conditions rather than in getting something for nothing. The money may also provide an incentive to get the landlord to the bargaining table. Additionally, continuing to pay rent may be in the best interest of the individual tenants; it keeps their disposable income at a stable level, and in case the union loses in court, the fund may be used to pay the judgment or an appeal bond. The decision is one that the tenant union should make only after advisement by competent legal counsel, but given the present state of the law, it would seem safer and in the best interests of all parties to establish the escrow account.[143] The danger that the landlord may attach the account may be avoided by depositing the fund with a bank in another jurisdiction.[144]

There is considerable difference of opinion about the wisdom of a tenant union's attempting to withhold rents in the absence of some statutory authorization. Indeed, the tenant union that attempts such a rent strike may subject itself to extensive legal retaliation.[145] In the first place, rent withholding in the absence of some statutory authorization is almost certain to result in litigation, which is both time-consuming and expensive to the tenant union. Furthermore, if the courts do not accept the common law theories supporting nonpayment of rent, the landlord can obtain an order restraining all union activity. Picketing may be enjoined because of the illegal end,[146] and the illegality of their conduct may render individual tenants beyond whatever legal protection against retaliatory eviction they may have had.[147] Nevertheless, the history of tenant unions in this country reveals that rent strikes are among the most effective means of forcing landlords to the bargaining table.[148] Because of the many inherent dangers to the tenants, however, rent strikes should be utilized only as a last resort.

Picketing and Adverse Publicity. Many union organizers feel that the over-all effect of rent withholding is minimal in comparison with the effect

142. HOUSING AND LAW PROJECT, *supra* note 113, ch. I, at 43.

143. *Id.*

144. *Id.* at 44.

145. Note, *Tenant Unions: An Experiment in Private Law Making*, 2 HARV. CIV. LIB.-CIV. RIGHTS L. REV. 237 (1966) *reprinted in* N.Y.U. PROJECT OF SOCIAL WELFARE LAW, HOUSING FOR THE POOR: RIGHTS AND REMEDIES (Supp. No. 1, 1967); Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801, 845-46 (1965).

146. *See* People v. Kopezak, 153 Misc. 187, 274 N.Y.S. 629 (N.Y. City Ct., Spec. Sess. 1934), *aff'd*, 266 N.Y. 565, 195 N.E. 202 (Ct. App. 1935).

147. Note, *Tenant Unions, supra* note 145, at 133-34 (appearing in reprint only).

148. Coulson, *The Tenant Union—New Institution or Abrasive Failure?*, 14 PRAC. LAW., April 1968, at 30.

of adverse publicity and political pressure upon the landlord.[149] Picketing and handbilling may be particularly effective in this regard. While the benefits derived from picketing the tenants' building may be minimal, significant gains may be realized by picketing the landlord's place of business or residence. This is particularly true if the pickets are all black and the landlord lives in a white suburban neighborhood. This tactic may be especially effective when carried on in conjunction with news coverage. Most landlords fear the social stigma of being identified as "slumlords" by their business associates, neighbors, or the general public.[150] Whatever its value in relation to rent withholding, tenant union leaders generally agree that this type of activity is essential for the ultimate success of the organization.[151]

Affirmative Legal Action. Another tool to force the landlord to the bargaining table is instituting an affirmative action against him, asking the court for damages. In bringing such an action the tenant union may rely upon established doctrines of tort liability such as nuisance or negligence.[152] However, in any such action the tenant would necessarily have to show that a duty existed on the part of the landlord to maintain the premises in a habitable condition. Such a duty may arguably be imposed by housing code provisions, but generally courts have been reluctant to find such an implied covenant of habitability.[153] In view of the recent trend to find such a duty imposed by statute, however, a strong argument can be advanced to support these actions.[154] In recognition of the need to allow tenants to sue landlords for damages resulting from their failure to maintain premises in a habitable condition, some authors advocate the recognition of a new tort — "Slumlordism."[155] Essentially, the elements of the tort would require that housing codes establish standards according to which the landlord is legally obligated to maintain rental property in a habitable condition. Failure to conform to that standard would inflict an injury upon the tenant, which the law would compensate.[156] The fact that "slumlordism" is not included in the traditional body of torts should not necessarily prevent its utility. As stated in *Whetzel v. Jess Fisher Management Co.*,[157] tort law should adjust to

149. Note, *Tenant Unions, supra* note 145, at 129-134 (appearing in reprint only).

150. HOUSING AND LAW PROJECT,, *supra* note 113, ch. I, at 41.

151. Interview with Steve Johnson, Legal Services Attorney with the South Florida Rural Legal Services, Inc., in Belle Glade, Florida, March 23, 1970. Mr. Johnson acted as attorney for the Harlem Tenant's Association, which staged a successful rent strike in Harlem, Florida, in 1969-1970. He attributed much of the tenant union's success to adverse publicity directed against the landlord in area newspapers. *See* text accompanying notes 221-242 *infra*.

152. HOUSING AND LAW PROJECT, *supra* note 113, ch. IV, at 40-44.

153. AMERICAN BAR FOUNDATION, note 124 *supra, Introduction* to art. II, pt. II, at 35.

154. *See* HOUSING AND LAW PROJECT, note 113 *supra*, ch. IV (sample brief).

155. *E.g.*, Sax & Hiestand, *Slumlordism as a Tort*, 65 MICH. L. REV. 869 (1967).

156. HOUSING AND LAW PROJECT, *supra* note 113, ch. IV, at 40-44.

157. 282 F.2d 943, 946 (D.C. Cir. 1960).

"contemporary community values and ethics." Furthermore, the power of the tenants to sue a landlord for damages would do much to equalize the relative power of landlords and tenants and would thus eventually result in better conformity with housing regulations.[158]

Faced with these prospects of legal and social turmoil, the landlord may be willing to deal with a tenant union that, although immediately responsible for his troubles, holds out the promise of stability in return for his participation in collective bargaining.[159] The product of the bargaining process may take many forms,[160] but hopefully the ultimate result will be better housing and an increased social awareness and sense of responsibility on the part of the landlord. Although an evaluation of the success of tenant unions may be premature, an examination of their activities to date indicates they may be an important factor in solving many housing problems.

Organization and Operation of Tenant Unions

Organizational Considerations

People forming tenant unions find considerable obstacles impeding organization. Although such difficulties, like tenant unions themselves, are definitely not restricted to lower-income or slum residents,[161] the organizational obstacles are best revealed from the perspective of slums and ghettos.

Generally, urban slum dwellers demonstrate a marked degree of apathy; this is, at least partially, linked to their economic status. Their income, or lack thereof, does not permit long-term responsible relationships with a union or an employer. In broader terms, "[t]heir lives have fewer dimensions, fewer avenues for personal participation in the activities of the community, and fewer opportunities for growth."[162] Organizing people who are demoralized in this way is extremely difficult. Experience has shown, however, that many such problems can be overcome if slum residency and other housing issues are posited as issues around which organization is oriented.[163]

A substantial amount of available material contains methods and techniques previously found to be of assistance in the organization and operation of tenant unions. One Chicago organizer has developed a six-step formula to facilitate this process. Initially, the buildings involved should be surveyed for violations of housing, sanitary, and related codes and ordinances. Second, a tentative organization should be formed, and future steps should be

158. Note, *Federal Aids for Enforcement of Housing Codes*, 40 N.Y.U.L. Rev. 948 (1965).

159. Coulson, note 148 *supra*.

160. Housing and Law Project, *supra* note 113, ch. I, at 50-102.

161. *See* text accompanying notes 177-180 *infra*.

162. Coulson, *supra* note 148, at 25.

163. Note, *Tenant Unions*, *supra* note 145, at 238 (reprint at 101). *See also* Coulson, *supra* note 148, at 24-25. There are vexing problems that tenants must face. For example, slum tenants have difficulty in identifying and locating their landlords. One low-income housing expert estimates that less than one-half of slum tenants know the identity of their landlords. *Id.*; F. Grad, Legal Remedies for Housing Code Violations 78-85 (1968).

discussed. The provisional organization should next send affidavits and other reports of the violations to the appropriate governmental agencies and request inspection of the buildings. The landlord should be requested to meet with the tenants and inspectors. If the union's posistion is strong enough, the possibility of a rent strike may be used as leverage at this stage. The tenants should present demands to the landlord that he correct the deficiencies within a reasonable time. Finally, if the demands are not met, the tenants should bring affirmative actions against the landlord (if local law permits) and begin rent withholding if feasible under the circumstances.[164]

In light of the legal and other difficulties facing slum and ghetto residents, it is not surprising that much of the organizational push necessary to start tenant unions has come from the "outside." One result of this external initiative is a "very high" mortality rate among tenant unions.[165] Nonetheless, the goal of forming viable tenant organizations has been consisdered desirable enough to attract continued efforts by such groups as labor unions, community action programs, religious and charitable organizations, and neighborhood legal service offices.[166]

Operational Experiences of Tenant Unions

The following empirical examples of tenant union operation in different parts of the United States are intended to illustrate the ideas and policies underlying tenant organization. In general, tenant unions have effected changes in housing conditions, caused political and social adjustments, and affected landlord-tenant relations in various places and among different social and economic classes.

New York. Originating in New York City, rent strikes occurred throughout the country during the winter and spring of 1963-1964.[167] In the opinion of a social worker involved in the New York strikes, the experience there strongly suggests that organization of tenants is most desirable in rent strikes. Otherwise, the worker found, economic pressure on a landlord was

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164. LAW IN ACTION, April 1968, at 1, 6. Various other sources of this type of information are available to the tenant union organizer, *e.g.*, HOUSING AND LAW PROJECT, *supra* note 113, ch. I, at 19-46.

165. G. GIBBONS, MATERIALS ON LANDLORD-TENANT 176 (1968).

166. Coulson, *supra* note 148, at 25. Mention of two groups that have been involved in tenant unions may furnish some indication of the outside influences that can affect tenant organization. The Southern Christian Leadership Conference, under the leadership of the late Dr. Martin Luther King, Jr., began organizing tenants in Chicago in January 1966. NEWSWEEK, Jan. 31, 1966, at 24-25. Community Action Programs provided for by federal poverty legislation have also run wide-scale rent strikes and tenant oriented organizational activities in efforts to change the traditional pattern of social and political alienation of the urban poor. Comment, *Participation of the Poor: Section 202 (a) (3) Organizations Under the Economic Opportunity Act of 1964*, 75 YALE L.J. 599 (1966).

167. Comment, *Rent Withholding and the Improvement of Substandard Housing*, 53 CALIF. L. REV. 304, 323 (1965).

relatively slight, and tenants could usually be intimidated into paying their rent by threats of eviction.[168]

Several years later Mayor Lindsay stated in a radio interview that New York City residents faced with landlord abuses should form tenant groups in their buildings and "have it out" with their landlords.[169] This advice was not academic; rather it reflected developments in New York following the 1963-1964 rent strikes and illustrated the growing political muscle of tenant unions and other tenant organizations. Several months prior to the Mayor's statement a citywide tenant-oriented housing council confronted landlords' spokesmen concerning fixing the responsibility for the problem of owner-abandoned real property.[170] One year after the mayor's interview, tenant groups were fighting to prevent a change in New York City's rent control law.[171] The experience of such potential political power and the taste of pragmatic success has been said to have encouraged slum tenants to pursue their goals through orderly and lawful processes.[172]

Chicago. There has been extensive tenant union activity in Chicago. Some of the organizers sent to Chicago by the Southern Christian Leadership Conference in January 1966[173] worked in the East Garfield Park area. Subsequently, residents of housing, all owned by a single landlord, organized the East Garfield Union To End Slums and undertook a rent strike that realized significant landlord concessions of renovated apartments and improved maintenance.[174] The union secured a contract in which the landlord agreed to make all repairs necessary to comply with applicable state and city requirements. The contract set forth specific requirements on painting, lighting, pest control, water supply, custodial care, and redecoration. Moreover, the union gained the right to inspect apartments when occupied by new tenants to prevent false assessments for damages. Finally, a grievance procedure was established, and, importantly, the tenants obtained a contractual right to deposit their rent with a third party if the landlord failed to meet his obligations under the agreement.[175]

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168. *Id.* at 305 n.4. Jesse Gray, the acknowledged leader of many of the strikes, was active in several tenant groups. Among them were the Harlem Tenant's Council, the Lower Harlem Council, and the Community Council for Housing. One of the tactics employed during this wave of rent strikes was a campaign entitled "Bring a Rat to Court." This was a bizarre but highly newsworthy and interesting tactic to underscore slum conditions in New York City. *See* New York Times, Dec. 31, 1963, §1, at 32, col. 2 (Eastern ed.).

169. New York Times, Nov. 24, 1968, §1, at 31, col. 1 (Eastern ed.)

170. *Id.* April 20, 1968, at 19, cols. 3, 4 (Eastern ed.).

171. *Id.* Dec. 12, 1969, at 58, cols. 3, 5 (Eastern ed.).

172. LAW IN ACTION, Feb. 1968, at 5.

173. NEWSWEEK, Jan. 31, 1966, at 24-25.

174. Wall Street Journal, Nov. 16, 1966, at 1, col. 1 (Eastern ed.). At this time over 10,000 Chicago tenants were members of some tenant union. The principal threats to the unions were considered to be tenant apathy, landlord hostility (one Chicago landlord called tenant unions a "Communist conspiracy"), and unspecified legal barriers. *Id.*

175. *Id.* at 23, cols. 4, 5 (Eastern ed.).

During this period the tenant union was a focus of interest for Chicago lawyers. Attorneys from civil rights groups, labor organizations, and the University of Chicago helped negotiate agreements and aided tenants who were threatened with eviction.[176] The interests opposing the tenant unions were doubtless also represented by counsel.

Non-slum Tenants. Recent developments demonstrate that the tenant union movement is not restricted to ghetto, slum, or other low-income residents. Under the aegis of the Chicago Tenants Union and the tenant activities of the Hyde Park-Kenwood Community Congress a new biracial coalition of tenants has been formed. This coalition presently includes poor black people, middle-class blacks and whites, and intends eventually to organize selected upper-class areas.[177] Rent strikes by tenants in luxury apartments and middle-class housing have succeeded in the Washington, D. C. area.[178] This success has prompted the formation of more tenant associations in Washington.[179]

Tenant unions composed of university students also exist. In 1969, 2,000 people, most of whom were University of Michigan students, went on rent strike under the leadership of the Ann Arbor (Michigan) Tenants Union. A conference on student and tenant rights at Ann Arbor this year was attended by over 200 students from thirty-five cities. The general conclusion of the conference was that a broad community base was desirable in any effort to better housing conditions; more specifically, the students opted to affiliate with a national tenants organization.[180]

Public Housing. Tenant activism has not been restricted to privately owned housing; a substantial amount of tenant union activity has occurred in public housing.[181] Because of the nature of public housing in the United

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176. *Id.* For a more detailed account of tenant union activities in Chicago *see* Note, *Tenant Unions, supra* note 145, at 240-48 (reprint at 103-15).

177. Washington Post, Dec. 15, 1969, §A at 1, col. 1; §A at 6, col. 1. The social classification is that given by the newspaper reporter. Some observers think tenant unions may be better suited for the middle-class than for ghetto residents. *See* F. GRAD, LEGAL REMEDIES FOR HOUSING CODE VIOLATIONS 141-42 (1968); Note, *Tenant Unions, supra* note 145, at 249-50 (reprint at 116); Miami Herald, April 28, 1970, §A at 6, col. 3.

178. St. Petersburg (Fla.) Times, April 1, 1970, §A at 15, col. 1. The Urban Research Corporation of Chicago performed a study of tenant organization militancy for the first eight months of 1969 and found that 23% of the militancy occurred among middle- and upper-income tenants. Christian Science Monitor, Nov. 19, 1969, at 8, col. 1 (Eastern ed.).

179. St. Petersburg (Fla.) Times, April 1, 1970, §A at 15, col. 2. The Berkshire Tenants Association, composed of elderly middle-class whites, is one of the latest organizations. It was formed to register grievances and fight what the tenants considered to be an unjust rent increase.

180. NATIONAL TENANTS ORGANIZATION, TENANT'S OUTLOOK, March 1970. This affiliation was to be by local student groups that would have the same status as other community groups.

181. *See, e.g.*, Thorpe v. Housing Authority of Durham, 386 U.S. 670 (1969). It should also be noted that the proposed Model Residential Landlord-Tenant Code does not exempt public housing. AMERICAN BAR FOUNDATION MODEL RESIDENTIAL LANDLORD-TENANT CODE

States this activity has centered around the urban poor. In describing the condition of such housing, one Chicago judge said: "Just about all public housing is a series of zoos. It makes animals out of people."[182]

Illustrative of tenant organizations' activities in public housing was a recent experience in Cambridge, Massachusetts. The Cambridge Housing Authority (CHA) and tenants in housing administered by that authority seriously disagreed concerning the maintenance and management of the authority's projects.[183] The tenants, who considered the CHA a powerful and indifferent agency, wanted tenant representation in the decisionmaking process that affected their lives. The vehicle chosen to achieve this end was the modernization program of the United States Department of Housing and Urban Development (HUD).[184] The tenants participating in the modernization program selected a representative body that, assisted by legal advisors, drew up a new lease acceptable to the CHA and HUD.[185] The lease provided for increased maintenance, rent withholding, rent reduction, and a grievance procedure.[186] The modernization regulations were predicated on the premise that both tenants and the authority were to participate in management, policymaking, and administration.[187] These activities resulted in the emergence of responsible tenant leaders and the development of strong tenant groups.[188]

(Tent. Draft) at 33 (1969). One of the most spectacular successes achieved by tenant organizations in public housing occurred in St. Louis. In 1969, 1,000 tenant families organized and forced a reduction in their rent from an average level of 42% of their income to 25%. This was accomplished through a nine-month rent strike that nearly bankrupted the local public housing authority. Christian Science Monitor, Nov. 19, 1969, at 8, cols. 1, 2 (Eastern ed.)

182. Washington Post, Dec. 16, 1969, §A at 8, col. 2.

183. 5 VISTA VOLUNTEER, June 27, 1969, at 25-31.

184. *See* HUD, MODERNIZATION PROGRAM PLANNING KIT (1968). This program presented HUD's view that "the most effective way to give impetus to the efforts of very poor people to help themselves is to involve them in decisions affecting the selection of the community programs and activities intended to benefit them." *Id.* at 13. Furthermore, HUD recognizes the "right of tenants to participate in voluntary associations." *Id.* at 12. The program kit was based upon HUD Circular 11-14-67, which specifically provides for "involvement of the tenants in the plans and programs for the modernization" of housing projects. Other federal agencies have recognized tenant unions for some time. *See, e.g.*, Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368, 1369 n.9 (1968) (the Federal Savings & Loan Ins. Corp., as lessor of foreclosed properties in Illinois, signed a contract with a tenant union, and the Department of Housing & Urban Development approved a lease for a public housing project in Michigan that recognized a tenant union and established future grievance machinery). *Id.*

185. Letter from Paul Newman to Charles Livingston, March 12, 1970, on file in University of Florida Law Review. Mr. Newman is chief attorney in the Community Legal Assistance Office of Cambridge, Mass.

186. *See generally* CHA MODERNIZATION REGULATIONS §111-G (1969). *See also* 5 VISTA VOLUNTEER, June 27, 1969, at 27. The grievance procedure was considered to be the most important provision. A hearing panel consisting of two tenants, two CHA staff members, and one disinterested citizen was established to consider tenant grievances. CHA MODERNIZATION REGULATIONS §111-B-9 (1969).

187. CHA MODERNIZATION REGULATIONS §111-1 (1969).

188. 5 VISTA VOLUNTEER June 27, 1969, at 31. Two levels of tenant groups were provided

Tenant Union Flexibility in Ameliorating Housing Conditions

Examination of selected past methods used to alleviate undesired housing conditions offers another perspective on tenant unions' flexibility and effectiveness. Generally, the most prevalent tenant complaints are shoddy maintenance, high rent, lack of tenant voice and control, and inadequate security.[189] Naturally, the type and cause of housing deficiencies vary with time and place; consequently, methods employed to relieve the unwanted conditions must conform to each particular situation. Tenant unions have the advantage of extreme flexibility to meet widely disparate conditions and the further advantage that they are not necessarily restricted to traditional legal remedies.[190]

Administrative Remedies. Tenant unions may also pursue available administrative remedies. For instance, a residents' and tenants' organization in Austin, Texas filed a complaint with the Department of Housing and Urban Development asking that the local urban renewal agency's request for approval of a neighborhood development project be denied. The complaint alleged that relocation plans were nonexistent, that the plan would further reduce the supply of low-income housing, and that the local agency had repeatedly ignored the needs of the area residents. It was also alleged that the agency was harassing the area residents, and the attempts of the agency to force renewal were causing the area to deteriorate further.[191] It is doubtful that an individual tenant could have filed such a complaint. Furthermore, the organizational pressure exerted upon the agency and HUD far exceeded the pressure an individual tenant might have brought to bear.

Tenant Management of Housing. The complaint that tenants have no voice in the management of the housing in which they live recurs regularly.[192]

for. At the level of particular housing projects, tenant councils serve as a quasi-official voice through which tenants can present grievances and problems more effectively to the appropriate officials. The elected officers of the tenant councils share with the manager the function of proposing and reviewing project administrative policy. CHA MODERNIZATION REGULATIONS §111-A (1969). The second level is citywide. A tenant senate, composed of representatives from each CHA project is charged with a broad overview of all the authority's projects and is to share in the ultimate decisionmaking process of the authority. The senate, in order better to accomplish this, is divided into committees having special areas of interest and responsibility. CHA MODERNIZATION REGULATIONS §111-8 (1969).

189. Christian Science Monitor, Nov. 19, 1969, at 8, col. 3 (Eastern ed.). authority for the reporter's statement was a study by the Urban Research Council of Chicago.

190. This is not to denigrate the potential effectiveness of legal remedies. For instance, the decision in Brown v. Southall Realty Co., 237 A.2d 834 (D.C. Ct. App. 1968), discussed in text accompanying note 115 *supra,* was immediately seen as a possible way to secure relief in the courts for at least some of the 280,000 residents of Washington, D.C. who were then residing in substandard housing. LAW IN ACTION, Feb. 1968, at 1. The obvious team to capitalize on this advance in the law is composed of tenant organizations and legal services attorneys. However, resort to the judicial process is time-consuming and, considering the present state of landlord-tenant law, not particularly promising in most jurisdictions.

191. 3 CLEARINGHOUSE REV. 306 (1970).

192. *See, e.g.,* 5 VISTA VOLUNTEER June 27, 1969, at 25-31; Christian Science Monitor,

An obvious solution is to let the tenants manage the apartments themselves. In Detroit last year, a rent strike supported by 5,000 members of the United Tenants for Collective Action led to tenant formation of several nonprofit management companies to obtain management contracts for twenty-one privately owned buildings. The central issue in this effort was whether low-income families could build the organizational strength needed to wage a continued economic struggle against their landlords. The tenant union provided this needed strength and served as the foundation for the management companies.[193] Thus, tenant unions can be utilized to provide the organization that is prerequisite for tenant management of housing.

Conversion to Tenant Ownership. Conversion of rental buildings to tenant ownership is not unprecedented. For example, many rental buildings in New York have been converted into cooperatives.[194] Tenants own shares in an apartment corporation and pay their "rent" to the corporation in the form of a maintenance charge under a proprietary lease. The corporation assumes any mortgage on the building and allocates mortgage payments to the tenants.[195] The advantage of tenant organization is obvious in this regard, and the New York tenants discovered that tenant unity was highly desirable in negotiations for the purchase of buildings.[196] If a landlord decides to sell (in which decision a tenant organization could be instrumental), he would naturally prefer to deal with an organized and legally competent body. In Florida this would most likely be an incorporated tenant union.

The Nixon administration has proposed legislation that would offer public housing tenants the opportunity to purchase their buildings. Under the proposed program tenants could band together to purchase both newly developed public housing and existing projects.[197] The program presupposes an organization in the nature of a tenant union.

Securing Minor Repairs. The remedies relevant to most tenants are somewhat more mundane than taking over their buildings, and for the majority of residential tenants, the true function of a tenant union may well lie along humble paths. For example, a few years ago a Chicago slum tenant discovered several rotten floorboards on his back porch. He reported this condition to the grievance committee of his tenant union. The committee investigated and asked the landlord to replace the porch. The landlord balked, so the problem was arbitrated pursuant to the collective bargaining agreement between the union and the landlord. The arbitration board found the porch unsafe but agreed with the landlord that his financial resources were too meager to replace it. The board directed the landlord to replace the floorboards that were actually rotten and he complied. If the

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Nov. 19, 1969, at 8, col. 3 (Eastern ed.).

193. Christian Science Monitor, Sept. 24, 1969, at 3, col. 1 (Eastern ed.).

194. New York Times, Nov. 23, 1969, §8, at 1, col. 1 (Eastern ed.).

195. *Id.*

196. *Id.* §8, at 7, col. 5.

197. Tampa (Fla.) Tribune, March 20, 1970, §A, at 18, cols. 1, 3.

landlord had refused to repair the rotten boards the tenant union members could have withheld their rent and paid it to an escrow fund. This would have continued until repair of the porch, the union financing the work through accumulated escrow funds.[198]

National Organization of Tenants

Tenant unions exist in every part of the United States.[199] Although sometimes bearing little resemblance to one another, they have many features in common, despite the varied circumstances under which they arose and the diverse difficulties they face. As indicated by a proposal for a national tenants association modeled somewhat after the American Automobile Association,[200] the existence of some type of national organization would seem appropriate. Apparently this proposal has not yet attracted significant support.

One reason for lack of such support is the already existing National Tenants Organization (NTO). The NTO is an affiliation of local tenant groups that encourages the formation of local unions.[201] To qualify for affiliation a local tenant group must be "democratically governed, composed of tenants, engaged in the organizing of tenants to improve housing and have at least ten (10) active members."[202] The local affiliates contain a cross sec-

198. Note, *supra* note 184, at 1368, 1369. It should not be overlooked that tenant unions can also be of assistance to landlords. They can reduce costs to landlords by self-enforcement of lease obligations and stopping costly vandalism. *See text* accompanying notes 82-87 *supra*. Furthermore, tenant unions are natural channels to harness tenant labor, self-help, and other forms of "sweat equity." Perhaps the most beneficial result to the landlord of tenant unions is that they can often stabilize landlord-tenant relations. Note, *supra* note 184, at 1375-77.

199. "Tenants [*sic*] unions are being organized from New York to San Francisco and in such unlikely places as Bridgeport, Conn. and Charlotte, N. C., to run strikes and to bargain with landlords." Miami Herald, April 28, 1970, §A at 6, col. 3. Tenant unions have been organized in Miami, Miami Beach, Harlem (Clewiston), and Homestead, Florida.

200. Comment, *Tenant Interest Representations: Proposal for a National Tenants' Association*, 47 TEXAS L .REV. 1160 (1969). The author questioned the feasibility of tenant unions and then went on to suggest his proposal. *Id.* at 1166. "A National Tenants' Association (hereinafter referred to as N.T.A.) would be designed to serve the interests of all tenants in the United States. It would thus have the attribute of calling attention to the tenant as a social entity and would thereby give tenants group power. As such, it could influence legislation affecting the interests of tenants in both the Congress and the state legislatures. It could also use its power to make the existing governmental and legal machinery function more effectively for tenants.

"The N.T.A. would consist of national, state and local offices staffed by full-time employees. Membership would be offered at a rate within the means of all tenants. Member dues would constitute the major source of income of the N.T.A. In return for their dues, members would receive benefits such as reimbursement for money spent on legal fees in any litigation with landlords involving the rental property, low-cost furniture rental, a nationwide apartment finding service, and group discounts on items such as moving and storage and homeowners liability insurance." *Id.* at 1167.

201. Christian Science Monitor, Nov. 19, 1969, at 8, col. 1 (Eastern ed.).

202. Mimeographed letter from National Tenants Organization, Feb. 1970, on file in University of Florida Law Review.

tion of tenants in the United States including residents in both public and private housing, persons of various ethnic backgrounds, and individuals having low, moderate, or middle income.[203] The NTO's stated purpose is "the promotion and furtherance of the social, political, and economic rights of . . . tenants in the United States and her possessions."[204] The organization traces its official birth to its first national convention in October 1969;[205] one month later the NTO embraced one hundred local groups in twenty-five states and sixty cities.[206]

One reporter who researched the present state of landlord-tenant relations and the function of the NTO in regard to those relations has written: "The potential for the infant tenants' rights movement is wide open. There are few legal limits anywhere on renters who wish to organize."[207] Although this writer's asssessment of the legal status of tenant unions is perhaps naive, he is doubtless correct that national and local organizers of tenant unions perceive great opportunities in this field, which they fully intend to pursue.[208]

TENANT UNIONS IN FLORIDA

Housing Conditions in Florida

There is a housing problem of vast magnitude in Florida. In 1960,[209] 16.1 per cent of Florida's approximately 1,777,000 housing units failed to meet federal criteria for decent housing.[210] Expressed more concretely, the census indicates that almost one-fifth of Florida's dwelling units lacked basic

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203. *Id.*

204. *Id.*

205. *Id.*

206. Christian Science Monitor, Nov. 19, 1969, at 8, col. 1 (Eastern ed.). Five months later the NTO claimed 140 member groups with more joining. Miami Herald, April 28, 1970, §A at 6, col. 3.

207. Christian Science Monitor, Nov. 19, 1969, 8, col. 5 (Eastern ed.).

208. Letter, note 202 *supra*: "The National Tenants Organization hopes to train and place tenant organizers in their home communities. It also seeks to develop models for organization and strategies for action by local tenant groups, not only for the immediate future, but for years to come." *Id.*

209. The most reliable statistics regarding housing in Florida are based on the U.S. Census of Housing of 1960. Although these statistics are ten years old, they are "probably fairly representative of general conditions even if they are outdated with respect to actual numbers." STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS, GENERAL HOUSING STATISTICS FOR FLORIDA 1960 (undated). The 1960 Housing Census did not appear until almost two years after the census was performed; it is unknown when the 1970 Housing Census will be published. A reason why Florida must rely upon the federal census, and thus await the new housing census before the present condition of housing in the state can be known with exactitude, is suggested by the following statement: "It is the legislated responsibility of this Department [State of Florida Department of Community Affairs] to determine housing needs and develop housing programs. We are currently asking the Legislature for funds to carry out these responsibilities, for which no funds have existed to date." Letter from James G. Richardson, Director of the Department of Community Affairs, to Charles H. Livingston, April 29, 1970, on file in University of Florida Law Review.

210. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 702 (1969).

plumbing or were dilapidated or both.[211] Nonwhite and rural Floridians are the groups with the worst housing. For instance, although 16.1 per cent of all housing in Florida is substandard, 24.6 per cent of rural housing[212] did not meet government standards. Using the same standards, 64.1 per cent of the state's 224,408 housing units occupied by nonwhites were substandard;[213] thus, less than 40 per cent of the nonwhite households were sound and had basic plumbing facilities.

On a more localized level, statistics for Alachua County and Gainesville indicate a severe housing problem. The 1960 census revealed that 26.2 per cent of the total housing units in the county were substandard.[214] In the smaller communities of the county[215] 944 units out of 2,428 (38.8 per cent) were rated poor (on a scale of poor, fair, and good) by county officials in 1969.[216] In Gainesville 69.1 per cent of the total housing units were determined to be sound and had all basic plumbing facilities;[217] however, of the 1,888 nonwhite housing units, only 24 per cent (453) were sound and had basic plumbing facilities.[218]

Substandard housing conditions obviously facilitate tenant activism and tenant union formation. In Florida a further factor that aids tenant organization is the large number of rental units. In 1960 there were 171,695

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211. *Id.*

212. DEPARTMENT OF COMMUNITY AFFAIRS, *supra* note 209, at 1. This is consistent with rural conditions nationally. *See, e.g.*, FLORIDA AGRICULTURAL EXTENSION SERVICE, FLORIDA EXTENSION HOME ECONOMICS FOCUS 18 (1967) (rural households are the largest in size with the most limited resources for adequate housing); U.S. DEP'T OF AGRICULTURE, *Low-Cost Wood Homes for Rural America, Construction Manual*, AGRICULTURAL HANDBOOK No. 364 (1969). "[M]any of our citizens in rural areas are living in outdated and substandard housing . . . ."

213. U.S. BUREAU OF THE CENSUS, U.S. CENSUS OF HOUSING: 1960, FLORIDA: STATE AND SMALL AREAS, H.C. (1) No. 11, Florida at 11-12, table 8 (1962). Almost one-tenth (24,078 of 224,408) of the nonwhite households had no piped water inside or out. For the state as a whole, 46,795 housing units of 1,776,961 lacked inside and outside plumbing. *Id.* at 11-13, table 9; at 11-12, table 2. About one-half (142,181 units of 224,408) of non-white housing had either a shower or bath. *Id.* at 11-13, table 9. It is noteworthy that nonwhite households tend to be rental properties. Although the total number of owner occupied units far exceeded that of renter-occupied units in the state, this relationship is reversed for nonwhite persons. Of all nonwhite housing units, 91,181 are owner-occupied while 133,227 are renter-occupied. *Id.* at 11-12, table 2.

214. DEPARTMENT OF COMMUNITY AFFAIRS, *supra* note 209, at 4.

215. These include Archer, Alachua, Micanopy, Waldo, Newberry, and High Springs. Gainesville is excluded because of its relative size and Hawthorne is deleted because figures were not available.

216. Interview with Mr. Hurst of the Alachua County Health Department, in Gainesville, Fla., April 24, 1970. Poor housing is considered to be that which is lacking plumbing or is dilapidated. *Id.*

217. U.S. BUREAU OF THE CENSUS, *supra* note 213, at 11-5, table 1.

218. *Id.* at 11-121, table 37. In Aug. 1969, approximately 1,650 housing units in Gainesville were considered to be substandard by city officials. By April 1970 this number was estimated to have been reduced to 1,400. Of these, the city estimates 45% are owner-occupied and 55% are rental units. City officials have found it is more difficult to alleviate conditions in renter-occupied housing than in owner-occupied housing. Interview with Mr. Howze of the Gainesville Community Development Dep't, in Gainesville, Fla., April 27, 1970.

rental units in the state; by 1968 this had grown to 288,296 (a growth of 67.9 per cent).[219] Thus, an increased number of tenants at a time when rents are rising because of general economic inflation presents tenant organizers with increasingly favorable opportunities.[220]

Tenant Union Activities in Florida

As with the national tenant union movement, it is probably true that tenant unions in Florida can be best evaluated by examining the experiences of some tenant unions in the state. Tenant union activity to date has been centered in southern Florida, both in Miami and in rural areas.

One rural tenant union was formed in Harlem, an all-black community of about 1,500 people located approximately a mile outside the city limits near Clewiston. The housing conditions in Harlem are clearly substandard and dilapidated.[221] The members of the tenant union live in a former public housing project consisting of 179 buildings.[222] There are six ten-toilet privies and twenty outside showers, which are seldom used because of their filthy condition. The only other running water comes from outside spigots that serve every other house. The walls are windblown and the uninsulated tin roofs have rotting support. No heaters are furnished, wiring is exposed, drainage is poor, and the decaying porches have broken steps.[223]

The housing project was built for the employees of United States Sugar, which has a refinery at Clewiston, and initially the sugar corporation owned the housing. In November 1968, however, the company deeded the property to the City of Clewiston,[224] which through the Clewiston Housing Authority then became responsible for the operation of Harlem.[225] Purportedly, the authority was formed to "provide decent housing for the poor because the houses were in dilapidated, rundown condition."[226] The authority, however,

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219. BUREAU OF ECONOMIC AND BUSINESS RESEARCH, COLLEGE OF BUSINESS ADMINISTRATION, U. FLA., FLORIDA STATISTICAL ABSTRACT 196 (1969).

220. *See* Miami Herald, April 28, 1970, §A at 6, col. 4. The article quotes an official of a property management firm: "I think housing is where the average person comes face to face with inflation in its most striking form—with a rent increase. Organizing this way is the easiest way for them to fight inflation."

221. Clewiston is in Hendry County, Fla., on the southern side of Lake Okeechobee. In 1960, 1,332 housing units of a total of 2,569 in Hendry County were sound with basic plumbing. U.S. BUREAU OF THE CENSUS, *supra* note 213, at 11-82, table 28.

222. In 1960 there were 391 housing units in Harlem, which included the project then owned by U.S. Sugar, other rental units, and a few owner-occupied houses. At that time the population of Harlem was 1,227. U.S. BUREAU OF THE CENSUS, *supra* note 213, a t11-79, table 27. The 179 buildings in the project have between 210 and 250 units, depending on how the residents connect them on a rental basis. Tampa Tribune, Nov. 21, 1969, at 18, col. 1.

223. For general descriptions of Harlem conditions *see* NATIONAL TENANTS ORGANIZATION, TENANTS OUTLOOK, Feb. 1970, at 1; Miami Herald, Dec. 21, 1969, §C at 2, col. 4; Palm Beach Post, Dec. 18, 1969, §D at 1, col. 1, Dec. 16, 1969, §A at 1, col 1.

224. Miami Herald, Dec. 21, 1969, §C at 1, col. 1.

225. Palm Beach Post, Dec. 16, 1969, §A at 1, col. 1.

226. *Id.* §A at 1, col. 2.

allegedly did little more than collect rent,[227] and about a year after the transfer the authority decided to increase rents.[228] This rent increase sparked a rent strike organized and run by the Harlem Tenants' Association.[229]

The strike lasted about ten weeks,[230] and between sixty-five per cent and eighty per cent of the tenants were said to have supported the strike.[231] The money due for rent was deposited in an Atlanta bank where it was thought to be safe from attachment,[232] and eventually the authority was nearly driven into bankruptcy.[233] In fighting the strike the authority threatened to cut off utility services and to evict some of the tenants who were not paying rent.[234] Subsequently, on December 30, 1969, the housing authority offered to deed the entire 54.37 acres[235] to the tenants' association. After some bargaining about the details of the conveyance,[236] a compromise agreement was reached.[237]

By terms of the agreement signed on February 24, 1970, the real property, the personal property and equipment associated with the project, and the remaining balance (17,592.87 dollars) of a gift from United States Sugar to the authority for use on the project was conveyed to the tenants' association.[238] The association agreed to continue to operate the low-cost housing of the project until this housing was replaced with new low-rent housing. The association further agreed that the conveyed property would be used only for low-rent housing and that the association would apply for funds from a federal agency to build new rental housing. The funds held in escrow (amounting to 4,906.40 dollars) were paid to the authority.[239] In addition, the agreement contained several forfeiture clauses. For example, if the association failed to use the conveyed property for rental housing for low-income people, the association would be obliged to reconvey the property to the authority upon its written request.[240]

Underlying the rent strike response to the rent increase was the desire of Harlem residents to influence the operation of Harlem and a deep resentment of the authority's "paternal attitude."[241] The agreement reached

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227. Palm Beach Post, Dec. 27, 1969, §A at 7, col. 1.

228. Miami Herald, Dec. 21, 1969, §C at 1, col. 1.

229. The Southern Patriot (Louisville, Ky.) Feb. 1970, at 1.

230. St. Petersburg Times, Dec. 7, 1969, §B at 1, col. 1.

231. *Id.* §B at 1, col. 2.

232. The Southern Patriot (Louisville, Ky.), Feb. 1970, at 3, col. 1.

233. Tampa Tribune, Nov. 25, 1969, ;A at 20, col. 1.

234. Miami Herald, Dec. 23, 1969, §B at 1, col. 1. The threat of eviction, however, was discounted in face of a potential riot: "U.S. Sugar wouldn't allow them to evict us. There would probably be a riot if they tried." *Id.* In any case, there was no eviction.

235. Special Warranty Deed, filed in official records of Hendry County, Florida, book 125, at 18.

236. *See* Palm Beach Post, Dec. 31, 1969, §A at 1, col. 1.

237. The Southern Patriot (Louisville, Ky.), Feb. 1970, at 8, col. 4.

238. Agreement entered into between Housing Authority of City of Clewiston and Harlem Tenants Association, Inc., §§1, 6, 8 (Feb. 24, 1970).

239. *Id.* §§2, 3, 4, 9.

240. *Id.* §§3, 10.

241. Miami Herald, Dec. 22, 1969, §C at 1, col. 5.

in February gave the residents total control and made the authority's attitude irrelevant. Although it is still too early to determine whether the Harlem Tenants' Association can provide decent housing for Harlem, its success to date bodes well for them.

Tenant unions seldom enjoy the success of the Harlem Tenants' Association; more modest achievements, however, are not to be denigrated and may, in fact, better exemplify tenant unions' functioning. One example of a less spectacular, but no less real, success occurred in Florida City, a farming town near Miami. There, a tenant organization called the Richland Tenants Union reached an agreement with landlords that resulted in the dropping of eviction notices against three tenants belonging to the union. The union agreed to pay rents that it had collected and placed into escrow accounts awaiting repairs promised by the landlords. The landlords further promised not to increase the rent as threatened and agreed to make necessary repairs to the building. The attorney for the union was quoted as saying: "We consider the tenants have won their case, and it further proves what can be done by people who stick together when their cause is justified."[242] This statement (questions of the justice *vel non* of the cause aside) seems clearly to be accurate. Certainly, the three tenants threatened with eviction by themselves could not have successfully resisted the landlords. The collective bargaining dynamics involved in cases like this necessitate the strength of a viable organization.

A recent Miami case, *EDOR, Inc. v. Biltmore Gardens Tenants Association, Inc.*,[243] illustrates other tenant union activity. The tenant association began collecting its members' rent and placing it into an escrow account after the landlord refused to perform his part of an agreement with the association. The landlord sought a temporary injunction to restrain the tenant union from "soliciting tenants and collecting rent,"[244] but the injunction was denied, and the rent strike continued. Eventually the differences were resolved, and the tenant union ceased collecting rent. One of the breaches of the agreement had been the landlord's refusal to make promised repairs. As part of the settlement these repairs were to be made from the funds held in escrow, which then totalled 11,806.78 dollars.[245] This case strongly indicates that the tenants' effort would have been impossible without organization. Rent had to be collected, records kept, and statements had to be made. Some of the tenants who were initially involved moved away, and the entire matter demanded a durability and flexibility that unorganized tenants would have lacked.

Tenant unions in Miami have also attempted to exert pressure within conventional political processes. In recent rent control hearings before the Miami Commission (the city council of Miami) the unions were represented by spokesmen including the head of the Citizens Tenant League

242. South Dade News Leader, March 3, 1970, at 1, col. 5.
243. No. 67-14234 (11th Cir. Fla., filed Oct. 2, 1967).
244. *Id.*
245. *Id.*

as well as the representatives of more localized tenant organizations. They argued for rent control as a stopgap measure to relieve housing conditions until more housing could be built. Although the issue had been unsuccessfully argued before the Metropolitan Dade County (Metro) Commission the previous week, it was thought the city officials might be more receptive to such a law.[246] At the very least the emergence of tenant unions in Miami has added a new voice to the political process, and tenants are thereby serving notice of their intention not to be overlooked in the making of decisions that affect their lives. In the future, tenants can be expected to react to unsatisfactory political decisions by resorting to a traditional American device – the ballot.

CONCLUSION

Tenant unions have had some success in Florida and the nation despite minimal statutory and other legal protection for residential tenants. One reason for the success achieved to date is the potential strength and inherent flexibility of tenant organizations. The recent formation of the National Tenants Organization promises to bring about an acceleration in the tenants' rights movement. Nevertheless, it should be noted that many legal concepts being advanced by tenant unions, such as rights against retaliatory eviction, partial actual eviction, landlord caused nuisance, and other theories that provide a legal basis for rent abatement, are not solidly established. Thus, much litigation can be expected as landlords seek to maintain their historically superior bargaining position.

It is a measure of union success to date that the residential landlord interests are responding strongly to the creation of unions. One Chicago realtor associated with landlord interests has said: "I feel strongly that the tenant union movement is probably the most important single threat to the rental housing industry existing today,"[247] In addition, he anticipates a number of possible effects from the movement, including "new reform legislation" and new patterns in the tenant-landlord relationship, which he views as unfavorable developments. The realtor has frightful visions that eventually tenant unions may alter the field of private property to the extent of negating some of the "rights of ownership." He envisions social and economic effects on the tenants, such as the ability to bargain with local merchants and politicians. Horrified, the realtor anticipates various combinations of local tenant unions with a subsequent city-wide, state-wide, and national political power roughly equal to the number of people involved. The realtor also suggests that the organizers of tenant unions are in reality

246. Miami Herald, March 27, 1970, §B at 1, col. 3. *See also* Miami Herald, April 28, 1970, §A at 6, col. 3 (rent control discussions in Miami Beach). It has been reported that 225,000 people live in substandard housing in Miami. Miami Herald, Dec. 7, 1969, §A at 1, col. 1.

247. Strauss, *Tenant Unions: Special Privilege Outside the Law*, 32 J. PROPERTY MANAGEMENT 129, 131 (1967).

out for personal gain and that tenant unions have adverse effects on individual tenants.[248]

Aside from the last mentioned derogation (which may be, after all, more a confession than an accusation), the realtor has argued, from the tenant's point of view, a good case for tenant unions. He is accurate in perceiving that people who form organizations such as tenant unions want to have some influence on the forces that affect their lives. Naturally, this influence is not restricted to housing alone. For example, in New York the members of a tenant association through political activity, altered the urban renewal plan for their neighborhood by preventing the destruction of needed and still serviceable housing.[249] In doing this they preserved the integrity of their neighborhood and ensured that they would be consulted before officials made plans for them.

This reflects the larger context in which the present housing crisis exists. New statutes or other law reforms cannot by themselves remedy the housing deficiencies of a nation. The root cause of the situation is economic and, to a lesser extent, the situation partially results from centuries of racial discrimination. Law reform by itself will not ensure the necessary massive injections of public money; it will not modernize the home building industry; it will not improve the economic condition of poorer tenants; and it will not eradicate all racial discrimination in housing. If the root of the problem is for the most part economic, the answer may well be political, and it may be that the most lasting effect of tenant unions will be the development of a new, viable political voice in the United States. If this is so, tenant unions will take their place in the mainstream of the American political tradition as vehicles by which free men strive within the legal system to better their lot and determine their destinies for themselves.

H. EDWARD HALES, JR.
CHARLES H. LIVINGSTON

248. *Id.*

249. New York Times, May 19, 1968, §8, at 1, col. 8 (Eastern ed.). *See also* New York Times, Dec. 15, 1969, §4, at 1, col. 7 (Eastern ed.) (Harlem organizations opposed the state's plan for a state office building and put forth a plan calling for low-income housing and a shopping, cultural, day-care and information center). HUD requires citizen participation in HUD assisted programs. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, URBAN RENEWAL HANDBOOK RHA 7100.1, ch. 7, ¶1. *But see* Ronfeldt & Clifford, *Judicial Enforcement of the Housing and Urban Development Acts*, 21 HASTINGS L.J. 317 (1970). "[A]dministrative agencies have continually failed to enforce those laws designed to benefit and protect the low-income families." *Id.* at 323.