EVERYTHING YOU WANT TO KNOW ABOUT GETTING OUT OF YOUR LEASE

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Disclaimer:

Please understand that by ordering this get out of lease kit, you are not retaining a lawyer for legal advice, nor are you retaining the services of either Andrew J. Ruzicho II nor Eric E. Willison. This kit is provided to you for informational purposes only. Please double check your state's landlord tenant statute to make sure that you have the latest pronouncement of the law at your disposal. If you do not see your state's statute in the appendix, your state may not have any provisions relevant to getting out of your lease; however, this kit still provides information that may be very helpful to your situation.

Nothing in this kit is a substitute for retaining an attorney to work on your case. It is recommended that you seek out an attorney if you have any doubts as to your situation. The facts and circumstances of your particular situation are unique and may require the expertise of an attorney to apply the law in your state to them.

CHAPTER 1 - Justifiable Reasons for Lease Termination by the Tenant

I. Technicalities.

Generally, technicalities will not work to get you out of a lease, but there are some rare exceptions.

A. Leases for Certain Periods of Time.

Many states have laws that certain contracts must be in writing. These laws are usually referred to as Statutes of Frauds. Many say that if a contract cannot be performed within one year, then it must be in writing. If your lease is oral and for more than one year, you should carefully check your state's laws, especially any that you come across which are labeled "Statute of Frauds."

Some states have laws which impose special requirements beyond mere writings upon certain written leases. For instance, in some states, if a rental agreement is for more than three years, then it must be in writing and must also be witnessed by two persons and notarized. To have a document notarized means that a notary public must acknowledge by signature thereon that all of the signatures appearing on the document were signed in front of him and that all were signed freely. Such leases must then be recorded with the County Recorder's Office. But if the lease is for three years or less, then it can be in writing (with no need of witnesses or notaries).

B. Leases Everyone Did Not Sign

Did everyone that is listed in the front part of the lease (under the definition of tenants) actually sign at the end? If not, then the person seeking to enforce the rental agreement may have a problem. Naturally, if the landlord tries to enforce the rental agreement against the person or persons who did sign it he will have problems.

But what about the persons who did sign it? A court in your state may decide that since the rental agreement was intended to be signed by all persons intending to be tenants, that the signature of only one of them was ineffective to bind all of them to the lease. So if you and four other roommates were looking to sign a lease and one backs out, then the whole thing may be off as only the signatures of all tenants who intended to move in will bind any of them.

Note however, that the situation may change drastically here if you have already moved in. In that case, it will be hard for you to go back and argue that you never meant to be bound by the lease terms without all signatories (all tenants who were supposed to sign the lease). This is because all signatories failed to sign and yet you moved in anyway. The court might well find that you have an implied contractor a verbal contract for a year's lease. On the other hand, if you are lucky, then the court will find that you are on a month to month tenancy and you only owe the landlord 30 days notice from the beginning of a rental period before moving out.

1. Failure of Co-Signers to Sign

A similar argument may be made if the tenants intended to sign with co-signers, and then a co-signer refused to sign, it is possible to argue that the lease is unenforceable. A co-signer or guarantor is someone who signs the lease in order to guarantee the performance of the obligations of the tenant(s). The cosigner does not live in the apartment as a tenant. For example, a parent may cosign a lease for their child that is renting the apartment. Their child may not have established any credit and the landlord wants the parents to guarantee that the rent will be paid. In a case where a cosigner refuses to sign, the tenants will have to argue that they would never have signed the lease without co-signers because they did not want to alone take on the responsibility of all those thousands of dollars in rent without someone to stand behind them and guarantee their payment.

The landlord will counter that the guarantors of the lease were for his benefit, not the tenants, and the failure of the guarantors to sign should not affect the enforceability of the rental agreement. But the tenant may counter that he would never have signed the lease without each tenant having a co-signer, given the fact that each tenant's financial position is usually quite doubtful and that joint and several liability extends to all.

Joint and several liability can best be understood like the motto of the Three Musketeers: "All for one and one for all." Among roommates, one roommates failure to pay his share of the rent means that all the other roommates are responsible for the one roommates failure to pay. So your landlord can hold you liable for the nonpayment of rent of your roommate or damages done to the apartment by your roommate. You would have to go after your roommate for the money you are out because the landlord chose to sue you and not your roommate.

II. Substantive Defenses

A. Landlord's failure to comply with his obligations under state law

Many states have specified that landlords must meet certain obligations. In Appendix I at the end of this publication, I have compiled a directory of state statutes that specify a landlord's obligations. To illustrate my point here, I am just going to reference Ohio law because the Ohio Landlord Tenant Act has served as the model act for many other state statutes.

Ohio Revised Code Section 5321.04 specifies a landlord's duties to the tenant. If the landlord has failed to perform his obligations under Ohio Revised Code Section 5321.04 (describing the landlord's duties to the tenant, including his duty to keep the apartment in a fit and habitable condition as well as his duty to abide by the terms of the lease), then Ohio Revised Code Section 5321.07 says that the tenant must send the landlord notice in writing of the problems. Generally, this procedure is followed when a landlord fails to make repairs at the apartment.

If after receiving your written notice requesting that certain repairs be made (which I recommend be sent by certified mail, return receipt requested so that there is no doubt

about when or if the landlord received the notice), the landlord fails to remedy the problem within 30 days or a reasonable time (whichever is sooner -meaning that the landlord can take only a maximum of 30 days to fix any problem covered by Ohio Revised Code Section 5321.04) then the tenant who is at that time **current** on his rent has three options.

Firstly, the tenant can start to escrow his rent with the Clerk of Courts. It is important that the escrow be done through the Clerk's office. Simply putting the money in a bank account in the tenant's name will not suffice. The money must be paid on time every month to the Clerk and in the entire amount. If not, the tenant can face eviction for failure to pay rent. The Clerk of Courts will not release such funds to the landlord until the tenant tells the Clerk that the problem has been fixed, or until the Court decides at a hearing that the problem has been fixed.

There are a few escape methods for the landlord here. If the landlord can prove to the Court that he cannot make the repairs without the money, then the Court will release some or all of the escrowed money to him for the repairs. Also, if the landlord shows that he will lose the building without the money because he is otherwise unable to make the mortgage payments, then the court may release some or all of the money to him.

Secondly, the tenant may petition the Court with a Motion to Compel/Force Repairs in accordance with Ohio Revised Code Section 5321.07.(B)(2). As a part of this Motion, the court may require that the tenant begin to escrow the rent. Once the rent has piled up sufficiently in the Clerk's account, then the Court may instruct the tenant to pay for the repairs himself and then the court will reimburse the tenant for those costs out of the escrowed rent.

Thirdly, under Ohio Revised Code Section 5321.07(B)(3), the tenant may elect to terminate the rental agreement. Although the law does not say it, it has been my experience that the court will require the conditions at the apartment be pretty darn bad before it will rule that the rental agreement is terminated. It would behoove anyone asserting these remedies to have proof of the conditions in the form of pictures or video to show the court (while the court could do so, the court is very unlikely to travel out to the apartment to look for itself). Do not rely on your word against the landlord's.

1. Examples

a. Landlord's Duty to Repair

If the furnace has gone out in the middle of the winter and the landlord has not repaired it in a reasonable time (a few days to a week) then the tenant can claim that this is a failure to repair within a reasonable time and can move out and terminate the lease agreement. Note that this is a very serious problem that the landlord has refused to repair in a reasonable amount of time. To justify terminating a lease, the failure to repair must involve problems of a similar degree of seriousness.

b. Failure to Comply with Lease Provision

If the lease agreement calls upon the landlord to fence in the backyard by a certain time, and then the landlord fails to do this, then the tenant can terminate the lease agreement. One word of caution on this however, is that if the court finds that the provision regarding fencing in the back yard is a non-substantive provision of the lease, then the judge is not likely to find that you had the right to break your lease. You will have to argue that there was some important reason that you wanted the fence constructed. Perhaps you have a dog who gets restless and noisy when he can't go outside. Perhaps there is crime in the area and a fence would keep people from coming up to the back of your house.

B. Unauthorized Entries by the Landlord

As mentioned above, many states have specified that landlords must meet certain obligations. In Appendix I at the end of this publication, I have compiled a directory of state statutes that specify a landlord's obligations with regard to unauthorized entries. To illustrate my point here, I am just going to reference Ohio law because the Ohio Landlord Tenant Act has served as the model act for many other state statutes. In the Appendix, I will spell out the differences your state may have when compared with Ohio.

Ohio Revised Code Section 5321.04 (A)(8) states that a landlord shall give reasonable notice to the tenant before entering into the property unless there is an emergency or unless it is impracticable to do so. Twenty four hours is presumed to be reasonable notice unless the party asserting that it is not can show the court otherwise.

Obviously, if the apartment is on fire, then the landlord need not give notice to anyone to enter and take steps to remedy the situation. If the tenant is out of town for a month and has not given the landlord a phone number to call for permission to enter, then it would likely be impracticable to give such notice. But similarly from the tenant's point of view, if the tenant tells the landlord that he will be spending the weekend out of town and will be back on Monday, then having the landlord leave 24 hour's notice on the tenant's answering machine may be unreasonable as well.

Here the law is recognizing the tenant's right to quiet enjoyment of the premises. Part of quiet enjoyment is the right to exclusive use of the premises. If the landlord keeps coming in without notice to the tenant, then this is an interruption of the tenant's right to quiet enjoyment and thus the landlord has breached the lease agreement.

Some courts have held that unauthorized entries are the same as a landlord's failure of his duty to fix the premises. This means that after the first unauthorized entry, the tenant must send the landlord a letter informing him of the problem and that the landlord is not to do it again. If the landlord then does it again, then he has breached the lease and this will give the tenant the right to terminate the lease.

C. Calling the Housing Inspector

Your apartment is covered by local ordinances which require the landlord to keep residential premises up to the local health and safety codes. If the landlord fails to do this and the tenant brings this to the attention of the city inspectors, then the city inspectors

will cite the landlord for his failures and require him to fix the property within a certain amount of time.

If the property is not fixed by that time or if satisfactory progress towards repair of the violations is not being made, then the city may post an eviction of its own, forcing you and all occupants out. This would constitute an interruption of your quiet enjoyment of the premises that the landlord promised you, and thus would give you the ability to terminate the lease agreement.

Before doing this, however, you should exhaust your other options. The reason is that this is like a one shot musket that you can point at the landlord. The threat is often a greater ally than the result. Once you report the landlord's building to the city, then you have fired your one shot, and there is nothing further that you can do to the landlord. Read upon the section on bargaining with this as a threat before simply going to the city inspectors and reporting the landlord.

D. Fire and casualty damage resulting to premises and tenant's ability to terminate tenancy

Many states have statutory provisions that permit a tenant to terminate the tenancy and move out as a result of damages to the premises resulting from fire or other casualty. I have included such a provision from the Delaware State Statute as an illustration. The Delaware statutory provision indicates that if a rental unit is destroyed by fire or other casualty to an extent that the enjoyment of such unit is substantially impaired (and the fire or other casualty occurred without fault of the tenant) then the tenant may immediately vacate the premises and indicate to the landlord within one week of moving out that he has done so. Check our appendix for such statutory provisions in your state.

Example: Delaware Statute Section 5309.

§ 5309. Fire and casualty damage; landlord obligation and tenant remedies.

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within 1 week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or

(2) If continued occupancy is lawful, vacate any part of the premises rendered unusable by fire or casualty, in which case the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit.

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and pre-paid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty. (70 Del. Laws, c. 513, § 2.)

E. Landlord's failure to provide essential services

Many states provide tenants with the ability to get out of a lease if the landlord fails to provide essential services such as heat, hot water, electricity, and other utilities. I'm again using the Delaware statute as an example. In that state, the tenant must give actual or written notice of the failure to provide essential services. If after 48 hours the landlord has not corrected the problem, the tenant may terminate the rental agreement.

Example: Delaware Statute Section 5308

(a) If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:

(1) Upon written notice of the continuation of the problem to the landlord, immediately terminate the rental agreement . . . .

F. Landlord's Failure to Provide Possession of the Premises

Several states allow tenants to terminate the rental agreement if the landlord fails to provide possession of the premises. Delaware provides another example. If the landlord does not put the tenant into possession of the premises and the tenant provides the landlord notice of this then the tenant may terminate the rental agreement and the landlord must return all monies paid to him by the tenant. Check the appendix to see if your state affords a similar remedy.

Example: Delaware Statute Section 5304

§ 5304. Tenant's remedies for failure to supply possession.

(a) If the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter and:

(1) Upon notice to the landlord, the tenant may terminate the rental agreement at any time the tenant is unable to enter into possession; and the landlord shall return all monies paid to the landlord for the rental unit, including any pre-paid rent, pet deposit and security deposit; and

(2) If such inability to enter is caused wrongfully by the landlord or by

anyone with the landlord's consent or license due to substantial failure to conform to existing building and housing codes, the tenant may recover reasonable expenditures necessary to secure equivalent substitute housing for up to 1 month. In no event shall such expenditures under this subsection exceed the agreed upon rent for 1 month. Such expenditures may be recovered by appropriate action or proceeding or by deduction from the rent upon the submission of receipts for same.

(b) If such inability to enter results from the wrongful occupancy of a holdover tenant and the landlord has not brought an action for summary possession against such holdover tenant, the entering tenant may maintain an action for summary possession against the holdover tenant. The expenses of such proceeding and substitute housing expenditures may be claimed from the rent in the manner specified in subsection (a)(2) of this section. (70 Del. Laws, c. 513, § 2.)

CHAPTER 2 - Mitigation of Damages

I. Introduction

A. Landlord's Duty to Mitigate Damages

Let's say that the landlord has you dead to rights. You got another job in another city and you just don't have a good excuse to terminate your lease agreement and move out ten months early. Are you up the creek with out a paddle? Maybe. Maybe not. It depends upon what your landlord does next.

This is because, in general, anyone suffering a breach of contract is required by the courts to mitigate their damages. This means that the landlord can't just sit around and let damages pile up in the form of unpaid rent. He has to take some reasonable steps to stop the flow of blood. Let's take a look at an example.

1. Example

I own a dairy farm and you own a supermarket. We have a contract where I sell milk to you. It goes like this. Every Sunday, you are to pay me for 500 gallons of milk. Every Monday, I am to deliver 500 gallons of milk to your back loading dock door at 5:00 am. The contract calls for me to unlock the door with a key you have given me and deliver the milk right into the refrigerated section of the store.

Everything goes along swimmingly for months until I hire a new driver and forget to inform him about taking the milk in. So, on one cold January morning, this new driver arrives at 5:00 am., rings the buzzer, and finding no one coming, leaves the milk on the back loading dock outside in the elements.

You arrive at 5:15 am., see this milk, and you are confronted with a choice. You can summon your employees who are just leaving the store to clock back in, and help carry this milk inside and then sue me for the extra money you had to pay your employees, or you can just ignore the whole thing and let the milk freeze (expanding to the point where it cracks its plastic containers) and ruining the whole shipment. If you do the latter and then sue me for the price of the milk that you pre-paid, the court will likely find that you failed to mitigate your damages and thus not award you recovery. In other words, it was well within your power to prevent the milk from ruining, and the law, generally, requires you to make an effort to do so.

2. Landlord Tenant Example

Now let's apply this to the landlord tenant situation. The landlord has an apartment and the two of you have signed a 12 month lease on the place. Two months in. you get a job in Kansas City paying you a great deal more than your present job, and you would be a fool to pass it up. You send your landlord a letter nothing him that you are going to be moving out.

The landlord has the legal right to the payment of rent through the end of the term. But

during the term of your absence, he generally can't just sit back and watch television and chuckle about how you are going to have to pay the rent through the end of the term. He has to be taking reasonable steps to rent out the place to another person to mitigate his damages. The court will require that he do what any person normally desirous of renting out that apartment would do.

B. Common Practices of Mitigation

There are several things that a landlord might do to mitigate his damages. Keep in mind that the landlord only has to do what is reasonable. Thus, some of these steps might not apply in every situation. For example, advertising in the newspaper might be pointless if you live in a small town that does not have a newspaper.

A landlord wanting to rent the place would

1) put up a "For Rent" sign;
2) list the place with a real estate agent;
3) advertise it in the paper;
4) put up fliers;
5) conduct open houses; and
6) take phone calls on it and conduct showings.

There are probably other things that landlords would do, so if you come up with one, feel free to use your landlord's failure to utilize it as a defense.

C. Burden of Proof

Since Failure to Mitigate Damages is an affirmative defense, you will have to mention it in your answer if you want to argue it in court. Further, since you are raising the issue, you have the burden of proving that the landlord failed to mitigate. You will also want to show the court the time that the landlord started to take his steps in mitigation. If the landlord waited several months to start advertising the place, then you can argue that you should not be charged for those months that the landlord was ignoring his duties to mitigate.

For instance, if the landlord claims you left the place a pig sty in July, and shows you a cleaning bill from a maid service for job in September, then you have a good argument that the landlord could not possibly be showing the place like that until it was cleaned up.

D. Documenting Your Proof

How do you prove that the landlord did not do something? Normally, whenever I set out to try to prove someone is lying about something, I sit down with a pencil and paper and think about it. Let's see.... If I had actually done this, what kind of documentation would I be likely to have? Then I bring up my opponent's failure to have this documentation as evidence that it was never done.

Let's go category by category from above.

1. For Rent Sign

Drive by the apartment every now and then (or have a friend drive by) and snap a picture of the place or video it. If there are no for rent signs, then this will hurt the landlord's case, especially if he testifies that there were such signs. Where were the signs? In the front window. When did you put them up? The day after you left.

Now show your pictures or video to the court. If you have time stamped them or your friend testifies as to when he took them, then you will be doing quite well.

2. Listing with a Real Estate Agent

Ask the landlord to produce a listing contract with a real estate agent. If he can't break out your pictures or video like above showing that no agent put a sign out in front. The court knows hill well that real estate agents splash their signs and faces all over every piece of property they are trying to sell or rent.

3. Newspaper Advertising

A very common practice when it comes to renting out property is to put a listing in the classified advertising section of the paper. If you are tiying to prove that your landlord did not do that, then you can ask him while he is on the stand whether or not he advertised the place. When he answers that he did, you can ask him what paper he used. When he tells you he used the Columbus Dispatch, then you can ask him when he started advertising the place. November 1, 2002, he will answer.

You will have a bag containing every Sunday Edition and one Weekday Edition from the time you left until several months afterwards. You'll ask him if he has any cancelled checks showing where he paid for such advertising. Oh, I paid cash, answers the landlord. Did you get a receipt? No.

Then you hand him the first of the newspapers and tell him to find his ad. Keep handing him newspapers until the admits that he didn't actually advertise it or that "they must have lost my order."

4. Fliers

If your landlord says that he put up fliers, ask him where and when he posted them. Ask him if he brought any copies of them with him to show the court. Ask him what information was on them. Ask him if he got any calls on them.

5. Open Houses

If the landlord conducted an open house, ask him if he had a register of those attending. Ask him how he publicized the event and if he has any proof by way of receipts for costs or copies of the notices. Ask him to name anyone who was there and provide a phone number. Ask him how many open houses he had and how long each day they lasted.

6. Taking Phone Calls Regarding Showings

One of the most devastating things you can do is to have a friend call up with a device that records the phone call and pretend to be interested in renting the place. If the landlord informs your friend that this particular place is not available, then you have him cold. If your friend calls up and leaves several messages about his interest in the place and then comes into court and testifies that he never got a call back, then this would help as well. It is perfectly legal in Ohio to record a phone call so long as at least one party to the conversation (and that can be the party doing the taping) knows that the call is being recorded). If you are located in another state, determine what the law is in your state before proceeding with such a recording.

Most landlords will also keep records of their incoming calls and the subjects of the calls and you can ask the landlord to produce any of these if he has them.

E. Extraordinary Efforts Unnecessary

The landlord will not have to do every thing that he can to rent the place. But he must take the steps that a reasonable person in that situation who actually wanted to rent the place would. Courts have not imposed an incredibly high bar for the landlord to jump over here, but you may be able to convince the court that your landlord did not jump high enough.

F. Other Procedures to Minimize Liability

As you have learned from the previous section, it is difficult to "get out' of your lease; however, procedures exist to minimize your liability if you find that you absolutely must break your lease. Before deciding not to honor your obligations under the lease, it is advisable to become familiar with what your obligations actually are. That is to say, most people never read their lease. The lease may provide for means by which you can lessen your potential liability.

1. Written notice

For example, most all leases require at least 30 days written notice of your intention to vacate the premises, i.e., move out. Most people believe that verbal notice is sufficient to convey their intention to do so. The problem with verbal notice is that landlords conveniently forget that they received such notice when they are trying to collect $5,000.00 in unpaid rents. Now, I am not saying that written notice is sufficient to prematurely terminate a lease, but written notice does provide a point in time where the landlord is aware that the premises will be vacant. From that point in time, the landlord must generally make a reasonable effort to re-rent the premises.

What does all this mean to you? Well, if you break your lease early, you are generally responsible for the time that the apartment remains vacant. Many landlords would argue that you are responsible for the remaining months of rent on the lease. However, landlords generally have the duty to mitigate or lessen their potential damages (the

remainder of the rent) by making a reasonable effort to re-rent the apartment to someone else. By providing written notice to the landlord, you have essentially started the clock on the landlord to find another renter. Without written notice, the landlord could argue that he or she was unaware the apartment was vacant until several days or months after you left.

How do you prove the landlord wrong in that situation? If a judge believes the landlord then you just added several months of rent liability to your total liability because you did not give written notice of your intention to leave early.

A written notice should contain at minimum your intention to vacate the apartment and the date you will be leaving. The written notice should be delivered to landlord in such a way that you can prove that the landlord received it (certified mail return receipt requested is a good method). You should keep a copy of the written notice and the return receipt for later use if necessary.

When using mitigation of damages as a defense, you should take care. There are some states which have case holdings and laws which indicate that there is no duty upon a landlord to mitigate his damages. Pennsylvania was once like this, but after some recent court rulings, the issue is now in doubt.

2. Subletting

Your lease may also contain a provision about subletting. Subletting involves your renting the apartment to another tenant. The law in many states indicates that a landlord may not unreasonably withhold his consent to your subletting the premises to another. Another option you have to lessen your liability for breaking your lease early is to rent the premises to someone else. Be forewarned, however, that if you sublet to another renter, you are still responsible for any unpaid rent or damages caused by that renter.

Also, many landlords like to hold on to your security deposit until the sub-lessee finally vacates the premises (which could be years after your lease ended). You would prefer to substitute the new renter for yourself on your lease instead of subletting. This complete substitution can only be accomplished if the landlord agrees in writing to let you out of the lease (See Appendix II) and signs a new lease with the renter you have offered to the landlord. Most landlords do not want to do this because by keeping you on the lease, the landlord still has the option of going after you if something goes wrong with the new renter you have offered.

If that is the case, what should you do? You should sign a separate lease agreement between yourself and the new renter and require a security deposit from the new renter equal to or greater than your security deposit. This security deposit from the new renter is some small guarantee that the new renter will not damage the apartment or fail to pay rent. If the new renter does damage the apartment or fail to pay rent, you, at the very least, have a sum of money you can apply towards that failure and are not stuck coming up with the money out of your own pocket.

3. Buy out clause and other negotiating tactics

Some leases may contain a provision allowing you to pay to get out of the lease early. Generally, landlords require a hefty sum to let you out of your lease. That sum may still be considerably less than the remainder of the rent due on the contract. Although written in the lease, that sum is still negotiable. Of course, the landlord realizes that you have very few options but it may be worth a shot to offer a lesser amount.

Other negotiating tactics you have available are to offer another renter to take your place on the lease as mentioned above. You can also stress to the landlord that you are penniless and any legal efforts on the landlords part to collect more than you can pay will be time and money down the drain.

4. Preserving evidence

One thing you should definitely do if you do move out in any situation is to make a video tape of the condition of the apartment upon your move-out. Once you have moved all your belongings and cleaned the apartment, take a video camera and videotape everything. Start with a shot of that that day's newspaper showing the date. Keep the newspaper for future reference. Then proceed through the apartment in an organized fashion such as floors, walls, ceilings. Be thorough and videotape inside closets, cabinets, cupboards, ovens, refrigerators, etc. Take the time to videotape faucets, lights, appliances and other such things working. Keep the videotape in a safe place and remember to return all keys at the time you indicated in your written notice to vacate. When videotaping, try to avoid spinning around the room in the same direction. Watching a half hour of that is enough to make a judge sick.

CHAPTER 3 - Importance of Documentation

I. Introduction

It has been my experience that lazy, shiftless, disorganized people do not do well in court proceedings. If that is how the court sees you, then you are going to be in a lot of trouble when it comes to trying to get out of your lease. The court is going to start off by assuming that you live your life the way you appear in court. It is easy for a court to believe that you are just making stuff up about problems at the apartment to cover the fact that you can't get along with your roommate if you show up with no documents to support your argument that the apartment is unsafe.

A. Don't Give Me Excuses, Give Me Documents

1. It's Not Hard

With today's technology, it is not hard to get documents to support your case. I don't want to hear about how you can't afford a camera when you can buy a disposable one at the grocery store for less than ten bucks and can get the film developed for less than that. Further, you most likely have a friend or a family member who has a video camera. Borrow it.

I also don't want to hear about how you "lost" the letter you sent to the landlord informing him that the furnace went out or that you "lost" the photos you took showing that the toilet was cracked in half. If you are a disorganized person, at the very least, make copies of everything and throw the whole mess into a shoebox or a big envelope. Then give it to someone who is organized.

2. Everything Should Leave a Trail

What wins in court is a combination of oral testimony and documentary evidence backing it up. If your landlord sent you a letter telling you that he was selling the house and he wants you out, then save that letter for when he sues you for leaving (the sale might have fallen through and now he is faced with unrented property).

a. Don't Talk, Just Write

If you will recall from the movie "Goodfellas", the character of Pauly would never talk on the phone. He didn't trust them because he never knew if someone might be listening and recording him. Your problem is the exact opposite. If you talk on the phone, it is likely that no one will be listening or recording it. If all you go into court with is "My landlord told me on the phone that I could leave early and not pay rent" then you are going to be in the hurt locker. This is because your landlord is going to lie and deny it and there you are.

So whenever possible, communicate with your landlord in writing. If your landlord tells you something on the phone, then for gosh sakes, send him a letter that same afternoon confirming the contents of the phone call. It should say something like you said A, and I

said B. If this is not your understanding, please write me back as soon as possible. If you keep a copy of this letter and bring it into court, the fact that the landlord does not have a letter written to you in response saying "What in the world are you talking about?" will support your case.

b. Video Beats Photos

Photographs show a still view of a very narrow section of reality. Video can give the judge the sense of being there, of getting an unedited view of the subject in question. Further, it can show things in action, rather than the best that photos can offer, time lapse photography. For example, if your outlets are sparking, turn of the lights and your videocamera will catch it over a ten or twenty minute period. Your camera might show some black marks around the outlet, but that's all.

Video is also great when you are showing that the thmace isn't heating the place. Simply focus the camera on the thermostat, set it for 68 degrees, and record the furnace's inability to raise the temperature over the next hour from 55 to 56. Try doing that with a Polaroid.

c. Photos Beat Nothing

If you can't get video, then you are left with photos, but that is better than nothing. Perhaps you can get clever and figure a way to take pictures that capture events over time or that give the judge a big picture look at what is going on.

d. Timestamping

The value of a video or photos is reduced by your failure to give the court some indication of when the images were taken. Sure you can go in and testify as to when you shot them, but the better organized person gets a copy of that day's newspaper and puts it in the background of every photo taken and at the start and finish of every video shot. The better organized person does not simply rely upon the time and date stamp of some cameras because these can be set like a watch. If you're going to be timestamping the photos, remember to either take a close up of the newspaper showing the date as one of the pictures or keep the paper to show the court.

B. You Don't Need Proof Beyond A Reasonable Doubt

Try to remember that this is not a criminal case. You do not need to prove your case beyond a reasonable doubt. You only need to be more convincing than the other side. Sure, it's theoretically possible that you could have faked the photos you took with certain digital enhancement techniques available through computers these days. But that's a bit of a stretch, isn't it? It's possible that you could have used some photocopier splicing tricks to get your landlord's signature on a document that he didn't really write, but if that is the landlord's argument, then he is in the hurt locker. The point is that so long as the evidence tends to support what you are saying, it will be useful to the court, so save stuff that helps you.

C. Copy and Organize Everything Before You Get To Court

It helps to buy a notebook with lots of sections. Put each piece of evidence supporting your case in a section and then make three copies of it. Label each section and have a table of contents so that you can find stuff quickly when you need it. If the court asks you for a copy of that letter you sent complaining that the stove didn't work, the court will be impressed by the fact that you can pop open your notebook, and hand the judge and the other side their copies within 20 seconds. This beats the hell out of showing up with all of your documents in a shoe box and fumbling around for several minutes while the judge taps her foot waiting.

D. Take Advantage of the Contrast

If you show up organized with all of your ducks in a neat row, the court is going to have trouble believing your landlord's argument that you are a shifty, lazy, con man. If you show up with documents supporting everything you say and your landlord shows up with an empty briefcase, then your landlord is sucking wind.

II. Conclusion

You can either organize and document, or you can take a chance that your winsome personality will shine through and everyone will disbelieve the other side's pictures and swallow your story, no matter how unlikely.

CHAPTER 4-ANSWERING A COMPLAINT

Detailed Explanation of Answer & Counterclaim

I. Answer Section

At the end of this chapter, we have provided a sample answer and counterclaim. Please refer to it when reviewing the explanations of its subparts.

A. Caption

At the top of every pleading filed in a lawsuit, there is a caption. Courts use this to identify where the case goes. The first thing you will list is what court you are in. Thus you will likely need to change the top section to match the Caption on the Complaint you received in the mail. You will need to include the case number exactly as it is written on your copy of the complaint or on your copy of the summons page accompanying the complaint (the letter from the clerk telling you that you are being sued and where you must go to defend the case). Naturally, you will also change the name of the parties to match the ones in your case.

B. Admissions and Denials

Go through the complaint that was filed against you and with a pencil, put an 'a' next to any allegation that you admit (perhaps the landlord has alleged that you lived at the apartment known as 123 East Main Street, Anytown, Ohio, 43221 and that is true. Put an 'a' next to it.

Put a 'd' next to any thing that you deny (such as "Defendant owes Plaintiff $4,000.00 for breaching his lease"). If you don't have any knowledge of whether something is true or not, put a 'wk' next to the number (such as "Defendant's roommate lied on her rental application that she had never been previously evicted").

Once you have done all of this, then you should go to the first paragraph of the Answer section and type in all of the numbers of the paragraphs that you admit. Do this again for the numbers that you deny, and again for the numbers that you are without sufficient knowledge to admit or deny. If there are any allegations that are partially true and partially false, then list these as well in their own numbered paragraph as I have done in the Answer form on Paragraph 4. You also want to put in the one about denying anything that you have not specifically admitted (this protects you if you leave out a paragraph by accident).

You may see a paragraph where the Plaintiff states something like "Plaintiff reincorporates [or realleges or restates or some form of this type language] all of his forgoing allegations as if fully restated herein." For these, you simply add a paragraph stating "Defendant reasserts all of his foregoing admissions and denials in response to paragraphs [then insert the numbers of those reallegation paragraphs]."

1. Sloppy Pleadings

Your landlord may have filed the matter himself, and if that is the case, it isn't likely to be a neat affair segmented into individual paragraphs like a lawyer would draft it. You may get one rambling paragraph. In such case, then you will want to break the allegations down individually and answer it sentence by sentence.

C. Affirmative Defenses

An Affirmative Defense is some condition that you allege exists which legally prevents the Plaintiff from getting the recovery he seeks. I have listed here all of the Affirmative Defenses that I could think of for a suit for recovery of rental amounts due and owing after you walk out on a lease. It is a rare case indeed where all of these defenses would apply. I have set out the nature of each defense below, so that you can consider it and see if it applies to your situation. If you can't decide whether or not it applies, then you should put it in your listed defenses because anything you don't list will likely be later considered to be waived by the Courts.

1. Statute of Limitations

In Ohio, certain claims for relief must be filed within a certain time period of the discovery of the facts giving rise to the claim. This would be a rare defense in Ohio on a failure to pay rent claim, because such claims sound in the nature of contracts. The statute of limitations on a written contract in Ohio is 15 years. I don't imagine that too many landlords will wait 15 years to sue you on a written lease you ran out on so long ago. The statute of limitations on an unwritten lease is 6 years. Even this is a long period for a landlord to wait. But sometimes you get some crazy case from your past where the landlord goes after you for something long ago. If he is out of the box on the statute, then you need to plead this as an affirmative defense.

2. Waiver, Laches, and Estoppel

a. Waiver

Waiver is the action or statement of a Plaintiff which bars his right to recovery. For instance, if the landlord wrote you a letter and told you that he wanted you to get out of the apartment before the end of the lease so he could rehab the place and sell it, then a court would likely rule that he has waived his rights to collect further rent after you left.

b. Laches

Laches is an unreasonable delay in bringing a lawsuit which causes the Defendant to have a great deal of difficulty defending the case. It is related to the Statute of Limitations as it is a time thing, but it is still different. In Laches, lets say ten

years have run on a written contract on a lease you walked out on. The landlord is still within the statute of limitations for bringing the claim, but by now, all of the papers you had to prove your defenses got thrown away because no one saves stuff forever.

If you can show the court that you once had a video of the fact that the furnace didn't work and that the roof was leaking a!! over your bedroom, but that over the last ten years the video had deteriorated or had been lost or taped over, then the judge might throw the case out because of the landlord's delay.

c. Estoppel

Estoppel occurs when a party to a lawsuit would normally have a legal right to recovery, but some action or omission he has done makes it unjust for the court to grant relief. An example would be if the landlord sent you a letter in the middle of the lease term telling you that he was immediately doubling your rent, and that if you did not pay it. then he would evict you. If you show this letter to the court, then there is a good chance that the court would find that the landlord is estopped from collecting further rent because he scared you off.

3. Actions and Inactions

This is very similar to estoppel, and many courts would consider it the same thing. I put it in for the sake of completeness. If the lease calls for the landlord to do something and he fails to do it, then you can claims that the landlord's claim for relief is barred because of his actions or inactions. For example, the lease might require the landlord to come to the apartment on the first of every month at noon and collect the rent. If the landlord doesn't come around, and then tries to sue you for lack of payment, then you can argue that his inactions bar his relief. You are essentially arguing here that there is something that the landlord did or failed to do which made it impossible for you to live up to your obligations.

4. Failure to Mitigate Damages

This is a big one, and you should almost always include it because you likely will not get any evidence on it until you either file Discovery Requests (such as a Request for Production of Documents, Interrogatories and/or Requests for Admissions). For a more complete explanation on how this defense works, you should go to the section on Mitigation of Damages which accompanies this kit.

5. Failure to Join Necessary and Indispensable Parties

If there are other persons who should be sharing in the damages that the landlord alleges, and the landlord has failed to name them as Defendants or get service of process upon them, then you should employ this defense. For instance, if someone else contributed to the damages to the property or made it impossible for you to occupy the apartment. and the landlord has failed to name such person as a party defendant, then you should employ this defense.

This is a defense, however that rarely works in landlord tenant situations because of the concept of joint and several liability. This means that if several tenants are renting a four bedroom apartment, and three of them run out on the rent, leaving only one to pay (and that's you and you can't possibly pay) then you may want to allege that those roommates should have been joined by the landlord as party defendants. The problem here is that the lease likely provides that you are jointly and severally liable for anything that they do, just as they are responsible for anything that you do. Thus, under the law, the landlord can get his entire recovery from you and all you can do is cross claim against your deadbeat roommates.

But if it is a situation where the landlord's crazy mother who lives in the apartment next door keeps coming over to your apartment and banging on the door at three in the morning telling you that there are demons in your basement and that you have to get out, then you might plead the fact that the landlord failed to include this person as a party defendant as an affirmative defense.

6. Failure to Join Real Party In Interest

This is a rare one, but it could pop up. In order to sue someone, you must be either the real party that got damaged, or you must be in privity with that party. For instance, if you signed a lease with your landlord, and then the landlord sold the place to someone else, and then you ran out on the lease, your new landlord could sue you, even though he is not a party to the lease because he is in privity with a party to the lease.

But sometimes a landlord will own his property in a company name which is incorporated in the State of Ohio (you can find this out by going to the county recorder and ascertaining who owns the property, and if it sounds like company rather than a person, you will want to check with the Ohio Secretary of State to see if it is a registered corporations, LLC or LP). Perhaps the lease lists the landlord as a Limited Partnership rather than a person.

So if the landlord, Bob Smith, sues you and lists himself as the Plaintiff, and your contract is with Bob Smith Enterprises, LLC, then you will want to assert this defense. Upon discovery of the error of his ways. Bob will make a motion to amend the complaint, but then you will point out to the judge that he can't represent an artificial entity like a corporation, LLC or LP (even if he owns it lock stock and barrel) unless he is a lawyer as that would constitute the unauthorized practice of law.

7. Payment

You may have made payments to the landlord for which he is not giving you credit. Perhaps he forgot to add in your security deposit, or the deposits of your roommates. Perhaps he isn't accounting for the fact that you paid February and March rent and you have copies of cancelled checks to prove it. If so, then you will want to assert this defense.

8. Constructive Eviction

If conditions around the apartment make it impossible for you to occupy all or a significant part of it, and you are forced by these conditions to leave, then you will want to assert this as a defense. An example of this might be if you basement keeps flooding out every time it rains and the carpet down there begins to rot and mildew and stink up the place. You'll want to have proof of this though. Read up on the section on Documentation in this kit.

9. Breach of Ohio Revised Code Section 5321.04 or similar other state statutory specifying a landlord's duties to a tenant

This is highly similar to Constructive Eviction. It is a statutory embodiment of the common law (Constructive Eviction being the common law). This statute lays out duties of the landlord, basically saying that the landlord has to abide by the lease agreement and keep the place in a fit and habitable condition. If it is not kept in such condition, and the tenant is current on his rent and notifies the landlord about the defect, and the landlord fails to repair the defects within a reasonable amount of time or 30 days, whichever is sooner, then the tenant has the right to declare the lease terminated and move out.

A word of warning here. You will want to be able to show the court some pretty bad conditions in order to make this one fly. Minor inconveniences (like a buzzing fan in the bathroom) will not work. Failure of the furnace in December or the Air Conditioner in July would be a lot better for you.

10. Unauthorized Entries

Ohio Revised Code Section 5321.04 and some other state statutory provision also have a section which requires the landlord to give you reasonable notice that he is going to be coming out to the apartment to inspect, show, or repair the building. He has to get your consent to a time to do so (although you cannot unreasonably withhold such consent). If you can show the court that your landlord is barging into the place in disregard of this statute, then you will want to include this affirmative defense. Check out the appendix attached to this work to see if your state has a similar provision to that of Ohio Revised Code Section 5321.04(A)(8).

11. Surrender of the Premises

There are times when a landlord will allow you to leave early. Perhaps he is confident that he will get the place immediately re-rented. So he says if you will forfeit your security deposit and one month's rent, he will allow you out of your lease agreement. Then, of course, he can't get the place rented until a year later and he sues you for the difference.

You would be wise to get the terms of any surrender of the premises in writing (example at Appendix II), but if you didn't, you can still introduce your own

testimony on the subject and see if the court believes you. If this is what happened, then you will want to include this affirmative defense.

12. Failure to Comply With Civil Rule 10(D)

In Ohio, Civil Rule 10(D) states that in any action upon a written contract, the Plaintiff must either attach a copy of that contract to the complaint, or a short explanation of why it could not be attached. You check through the civil rules of your state to see if there is something like this. Since the action brought against you is based upon a contract, Civ. R. 10(D) (or the version of it your state may be using) applies. If the landlord fails to attach the contract, then include this affirmative defense.

You won't likely win on the issue, but it might scare the landlord if he doesn't know the rule and make him more willing to deal on the amount he is alleging you owe.

13. Set Off

You may have your own counterclaim against the landlord for something that he did to you. If you do counterclaim and the court finds that he owes you $500.00 and that you owe him $750.00, then the court will issue a judgment against you for only $250.00. If this is the case, then plead this affirmative defense.

14. Breach of Contract

If the landlord breached the rental agreement first, and that breach caused you to walk away from the apartment, then you should plead this as an affirmative defense (as well as including it in your counterclaim). Perhaps the landlord promised that he would install new carpet throughout the apartment prior to your move in, and when you got there, it was still the same old ratty carpet as ever. You will then want to plead this as an affirmative defense.

15. Failure to State a Claim Upon Which Relief Can Be Granted

Maybe you never had a written or an oral lease. Rather, you were on a month to month tenancy, and you gave the appropriate 30 day's notice before you left. If that is the case and your landlord is suing you as if you were on a one year lease, then you will want to plead this as an affirmative defense. Naturally, your letter telling him that you are ending your month to month tenancy and the lack of a signed lease for the duration of a year will be very helpful in proving your case.

16. Unripe Claims

For a claim to be recoverable, it must be ripe for adjudication. In the landlord tenant arena, this most often comes to pass when the landlord sues you for rent that is not yet due. For instance, you sign a lease running from August 2002 to

August 2003. You move out on September 30, 2002 and stop paying rent. The landlord sues you for all of the rent due and owing for the whole year's term on October 15,2002. The problem that the landlord has is that as of October 15, 2002, the only claim that he had was for October's rent. He doesn't know if you are going to pay November, December etc., nor does he have a right to it until those months roll by.

The exception to this rule is if the landlord has included a "rental acceleration" clause in the lease. These clauses state that upon any breach of the lease agreement, the entire amount due under the lease becomes due immediately. Most leases have such clauses. But if you have some sort of a homemade lease done by the landlord, then he may not have this clause in it and you will want to assert this defense.

17. Retaliatory Eviction

Ohio Revised Code Section 5321.02 and other state statutory sections make it illegal for a landlord to initiate eviction proceedings against a tenant for complaining about the condition of the premises to any person, or for attempting to organize the tenants in a rental building. If you can show that the landlord threw you out because you were participating in a protected activity, then you should assert this defense.

It's a tough one to prove though, because you are trying to convince the court as to what is in the mind of the landlord. You can do this to some extent by showing how the timing of the eviction was right around the time you complained, but without a smoking gun letter from the landlord saying something like "this will teach you not to complain about my place to the City Code Inspector" then you may have a rough go at this one.

Your state may have a retaliatory evictions statute, and you should check through your state's law to see if you do and then cite to it in your Answer.

18. Soldiers and Sailors Relief Act

Federal law states that if a lawsuit is brought against you while you are on active duty in the Armed Forces and this duty makes impossible or extremely difficult for you to participate in defense of the lawsuit, then the landlord will have to wait to sue you until you either get off active duty, or you get stationed in a job that allows you to conveniently respond to the lawsuit. Please note that it does not actually defeat the suit, it just makes it impossible to bring it until your term of service is up or brings you back to the state where you rented in a way that makes you able to defend. For all practical purposes, however, the landlord is not going to wait six year to sue you. By then he will likely have gotten on with life.

19. State Service Member Relief Acts.

Many states have provisions in their laws which take into account the difficulty a

lease agreement for a set term can place upon a service member who has been ordered to another posting. The same difficulty hits reserve service members summoned to active duty. Obviously, it is in the national interest to have the service member spending more time worrying about getting the job done and less time worrying about how rent is going to be paid to a landlord.

The attached Appendix Two contains a listing of all of the states in the United States which have laws allowing certain types of relief to service members. Immediately below, we can see a typical example of such legislation just to give you a flavor of how it may work in your state. If you are a service member concerned about getting out of your lease because of duty requirements, you should speak to the Judge Advocate General's office on the military installation to which you report.

a. Georgia Section 44-7-22.

Georgia Section 44-7-22 is a provision of the law which requires the landlord to let you out of your lease agreement if you are in the military and get sent somewhere else on active duty. It states in pertinent part as follows:

(a) As used in this Code section, the term 'service member' means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member may terminate his or her residential rental or lease agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(1) The service member is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;
(2) The service member is released from active duty or state active duty after having leased the rental premises while on active duty status and the rental premises is 35 miles or more from the service member's home of record prior to entering active;
(3) After entering into a rental agreement, the service member receives military orders requiring him or her to move into government quarters;
(4) After entering into a rental agreement, the service member becomes eligible to live in government quarters and the failure to move into government quarters will result in a forfeiture of the service member's basic allowance for housing;
(5) The service member receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or
(6) The service member has leased the property but prior to taking possession of the rental premises receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(c) The notice to the landlord pursuant to subsection (b) of this Code section shall be accompanied by either a copy of the official military orders or a written verification signed by the service member's commanding officer.

(d) In the event a service member dies during active duty, an adult member of his or her immediate family may terminate the service member's residential rental or lease agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord_'s receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the service member was on active duty or a written verification signed by the service member's commanding officer and a copy of the service member's death certificate.

(e) Upon termination of a rental agreement under this Code section, the service member is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The service member is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this subpart. Notwithstanding any provision of law to the contrary, if a service member terminates the rental agreement pursuant to this Code section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(f) The provisions of this Code section shall apply to all residential rental or lease agreements entered into on or after July 1, 2005, and to any renewals, modifications, or extensions of such agreements in effect on such date. The provisions of this Code section may not be waived or modified by the agreement of the parties under any circumstances.

b. Georgia Section 44-7-37.

Another related statute is Georgia Section 44-7-37 which states in pertinent part as follows:

Notwithstanding any other provision of this chapter, if a person is on active duty with the United States military and enters into a residential lease of property for occupancy by that person or that person's immediate family and subsequently receives permanent change of station orders or temporary duty orders for a period in excess of three months, any liability of the person for rent under the lease may not exceed:

(1) Thirty days´ rent after written notice and proof of the assignment are given to the landlord; and
(2) The cost of repairing damage to the premises caused by an act or omission of the tenant.

20. Reserved Defenses

There may be other defenses out there that I either have not thought up, or one of the defenses listed above that you initially thought did not apply to you, but then later on you find out that it did. It makes it a lot easier for a court to grant you leave to amend your answer to include one of these defenses if you put in a section on reserved defenses. That is why I almost always include such a defense in every answer I file.

II. Counterclaim Section

A. Short Plain Statement of the Facts

You might want to model your counterclaim on the way the lawyer for the landlord drafted his complaint against you. That's all a counterclaim is. It is a suit by the Defendant back against the landlord. You need to give the other side enough information about the facts that you are alleging and the damage you suffered so that they can formulate a response to it. The best practice is to break the statements you make in the counterclaim down into simple, single allegations in each numbered paragraph. That way when the Plaintiff admits or denies them, you will know what he is admitting or denying.

B. Wherefore Section

In this section, you are telling the court what you want. Perhaps you are alleging that the landlord wrongfully withheld your security deposit. In such a case, you will want to ask for it back, plus double damages and attorneys fees under Ohio Revised Code Section 5321.16 (see the kit on recoveiy of security deposits). Don't ask for a ridiculous amount of money which does not reflect your actual damages. Don't ask for thousands of dollars in "pain and suffering."

In fact, don't ask for anything for pain and suffering or mental anxiety unless you sustained actual physical injury or were so badly driven to distraction by it all that you had to go see someone like a counselor, psychologist. If you make these requests, you will look like something of a chump to the court. You may have read about cases in the newspaper where someone was awarded a million bucks for pain and suffering, but this is usually related to the pain and suffering from being raped, or having an aim cut off.

III. Signature Block

You will want to sign your name to the pleading, but by doing so, you warrant to the Court under Civil Rule 7 that what is in the case is true and accurate to the best of your knowledge and belief. If you don't sign the pleading, an alert clerk will not let you file it. The information regarding your address and phone number and all needs to be on there. It doesn't have to be your address, it can be the place you want all of the pleadings and papers in the case sent.

IV. Certificate of Service

Everything you file (except for a Complaint) must have a certificate of service on it showing the court that you mailed a copy of what you filed to the other side and to all of the other parties in the case. Even if what you are filing does not directly concern a party to the case, you still need to send a copy out to that party. That is why it is best to make four or five copies of everything you file, so that you can send one to as many parties as there are in the case. The clerk of courts will want one or two copies as well.

IN THE MUNICIPAL COURT OF BLANK COUNTY, ANYSTATE

Larry Landlord,	
Plaintiff,	Case No.
v.	Judge
Joe Tenant,	Defendant's Answer and
Defendant.	Counterclaim

ANSWER OF DEFENDANT JOE TENANT

1. Defendant admits the allegations in Paragraphs Number 1,2, 3,4, and 5.

2. Defendant denies the allegations in Paragraphs Number 6, 7, 8, and 9.

3. Defendant denies for lack of knowledge the allegations in Paragraphs Number 10, 11,and 12.

4. Defendant admits the allegation in Paragraph Number 15 that he is a resident of Ohio, but denies all other allegations therein.

5. Defendant denies any allegation of the Plaintiff not expressly admitted herein.

First Affirmative Defense: Statute of Limitations

6. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

7. Plaintiffs claims are barred by his failure to bring his claim for relief within the applicable statute of limitations.

Second Affirmative Defense: Waiver, Laches and Estoppel

8. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

9. Plaintiffs claims are barred by the equitable doctrines of waiver, ladies, and estoppel.

Third Affirmative Defense: Actions and Inactions

10. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

11. Plaintiff s claims for relief are barred by his own actions and inactions.

Fourth Affirmative Defense: Failure to Mitigate Damages

12. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

13. Plaintiffs claims for relief are barred by his failure to mitigate his damages.

Fifth Affirmative Defense: Failure to Join Necessary and Indispensable Parties

14. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

15. Plaintiffs claims are barred by his failure to join necessary and indispensable parties.

Sixth Affirmative Defense: Failure to Join Real Party in Interest.

16. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

17. Plaintiffs claims are barred by the fact that he is not a real party in interest to this lawsuit.

Seventh Affirmative Defense: Payment

18. Defendant realleges all of the foregoing denials and admissions as if fhlly restated herein.

19. Some or all of Plaintiffs claims for relief are barred by Defendant's payment of amounts alleged to be owed including but not limited to security deposits paid.

Eighth Affirmative Defense: Constructive Eviction

20. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

21. Plaintiffs claim for relief is barred by his constructive eviction of the Defendant.

Ninth Affirmative Defense: Breach of Ohio Revised Code 5321.04 Duties

22. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

23. Plaintiffs claims are barred by his failure to comply with his duties as a landlord under Ohio Revised Code Section 5321.04.

Tenth Affirmative Defense: Unauthorized Entries

24. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

25. Plaintiffs claims for relief are barred by his unauthorized entries into the rental premises during the term of the lease.

Eleventh Affirmative Defense: Surrender of the Premises

26. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

27. Plaintiffs claims are barred by his acceptance of a surrender of the premises.

Twelfth Affirmative Defense: Failure to Comply with Civil Rule 10(D)

28. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

29. Plaintiff has failed to comply with Civil Rule 10(D) with regard to required attachments to the Complaint.

Thirteenth Affirmative Defense: Set Off

30. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

31. Plaintiffs claim for relief should be reduced by an amount set off by what Plaintiff owes Defendant on Defendant's Counterclaim.

Fourteenth Affirmative Defense: Breach of Contract

32. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

33. Plaintiffs claims for relief are barred or set off by his own breach of the contract.

Fifteenth Affirmative Defense: Failure to State a Claim

34. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

35. Plaintiff has failed to state a claim upon which relief can be granted.

Sixteenth Affirmative Defense: Unripe Claims

36. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

37. Some or all of Plaintiffs claims for relief are not yet ripe for legal consideration.

Seventeenth Affirmative Defense: Retaliatory Eviction

38. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

39. Plaintiffs claims are barred because of his violation of Ohio Revised Code Section 5321.02.

Eighteenth Affirmative Defense: Soldiers and Sailors Relief Act

40. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

41. Plaintiff s claims for relief may not be heard as the Defendant is on active duty with the Armed Forces of the United States and such duty makes it impossible for him to attend and defend the action.

Nineteenth Affirmative Defense: State Service Member's Relief Act Section []

42. Defendant realleges all of the foregoing denials and admissions as if fully reated herein.

43. Plaintiff's claims are barred or limited by Section [] of the [] Code allowing service members summoned to active duty certain types of relief.

Twentieth Affirmative Defense: Reserved Defenses

44. Defendant realleges all of the foregoing denials and admissions as if fully restated herein.

45. Defendant reserves the right to assert additional affirmative defenses as they become known to him during the course of this lawsuit.

COUNTERCLAIM OF DEFENDANT

1. [Insert short plain statement of the facts alleging how the Plaintiff broke the law or caused you some actual harm].

2. [Break your short plain statement of the facts into individual allegations that can be admitted or denied individually.

3. [Keep going until you have numbered all of your statements]. Wherefore, the Defendant demands relief in the amount of [amount], together with attorneys fees, costs, interest, and any and all other relief, both legal and equitable, to which he may be entitled.

Respectfully submitted,
Joe Tenant
456 West Broad Street
Anytown, Anystate 43221
(614)555-1212
Defendant Pro Se

Certificate of Service

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon counsel for Defendant, Adam B. Attorney, Esq., 789 Barrister Street, Anystate, Ohio, 43221 by ordinary U.S. Mail, postage prepaid this ____ day of February, 2006.

Joe Tenant
Defendant Pro Se

APPENDIX I - DIRECTORY OF STATE LAWS

Please verify that your state's statutory section has not been updated or modified from what is provided below. Other statutory sections may apply to your case, in those situations, please review the entire landlord tenant act from your state for such provisions.

ALASKA

Sec. 34.03.100. Landlord to maintain fit premises.

(a) The landlord shall

(1) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(2) keep all common areas of the premises in a clean and safe condition;

(3) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(4) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(5) supply running water and reasonable amounts of hot water and heat at all times, insofar as energy conditions permit, except where the building that includes the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(6) if requested by the tenant, provide and maintain locks and furnish keys reasonably adequate to ensure safety to the tenant's person and property; and

(7) provide smoke detection devices and carbon monoxide detection devices as required under AS 18.70.095 .

(b) A landlord of a single family residence located in an undeveloped rural area or located where public sewer or water service has never been connected is not liable for a breach of [a][3] or [5] of this section if the dwelling unit at the beginning of the rental agreement did not have running water, hot water, sewage, or sanitary facilities from a private system.

(c) The landlord and tenant of a one- or two-family residence may agree in writing that the tenant perform the landlord's duties specified in [a][4], [5], [6], and [7] of this section. A tenant may agree to perform the duties specified in [a][3] of this section in rental units where the rent exceeds $2,000 a month. They may also agree in writing that the tenant

perform specified repairs, maintenance tasks, alterations, and remodeling, but the tenant may not agree to maintain elevators in good and safe working order. Agreements are allowed under this subsection only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set out in a separate writing signed by the parties and supported by adequate consideration; and

(2) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(e) The landlord may not treat performance of a separate agreement described in [d] of this section as a condition to an obligation or performance of a rental agreement.

Sec. 34.03.160. Noncompliance by the landlord: General.

(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with AS 34.03.100 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate upon a date not less than 20 days after receipt of the notice if the breach is not remedied in 10 days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise, and the landlord remedies the breach before the date specified in the notice, the rental agreement will not terminate. In the absence of due care by the landlord, if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least 10 days written notice specifying the breach and the date of termination of the rental agreement. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

(b) Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or AS 34.03.100 , 34.03.210, or 34.03.280.

(c) The remedy provided in [b] of this section is in addition to a right of the tenant under [a] of this section.

(d) If the rental agreement is terminated, the landlord shall return all prepaid rent or security deposits recoverable by the tenant under AS 34.03.070 .

CALIFORNIA

(1941.) Section Nineteen Hundred and Forty-one.

The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable, except such as are mentioned in section nineteen hundred and twenty-nine.

1941.1.

A dwelling shall be deemed untenantable for purposes of Section 1941 if it substantially lacks any of the following affirmative standard characteristics or is a residential unit described in Section 17920.3 or 17920.10 of the Health and Safety Code:

(a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.

(b) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order.

(c) A water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.

(d) Heating facilities that conformed with applicable law at the time of installation, maintained in good working order.

(e) Electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order.

(f) Building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.

(g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being responsible for the clean condition and good repair of the receptacles under his or her control.

(h) Floors, stairways, and railings maintained in good repair.

1941.2.

(a) No duty on the part of the landlord to repair a dilapidation shall arise under Section

1941 or 1942 if the tenant is in substantial violation of any of the following affirmative obligations, provided the tenant's violation contributes substantially to the existence of the dilapidation or interferes substantially with the landlord's obligation under Section 1941 to effect the necessary repairs:

(1) To keep that part of the premises which he occupies and uses clean and sanitary as the condition of the premises permits.

(2) To dispose from his dwelling unit of all rubbish, garbage and other waste, in a clean and sanitary manner.

(3) To properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits.

(4) Not to permit any person on the premises, with his permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing.

(5) To occupy the premises as his abode, utilizing portions thereof for living, sleeping, cooking or dining purposes only which were respectively designed or intended to be used for such occupancies.

(b) Paragraphs (1) and (2) of subdivision (a) shall not apply if the landlord has expressly agreed in writing to perform the act or acts mentioned therein.

1941.3.

(a) On and after July 1, 1998, the landlord, or his or her agent, of a building intended for human habitation shall do all of the following:

(1) Install and maintain an operable dead bolt lock on each main swinging entry door of a dwelling unit. The dead bolt lock shall be installed in conformance with the manufacturer's specifications and shall comply with applicable state and local codes including, but not limited to, those provisions relating to fire and life safety and accessibility for the disabled. When in the locked position, the bolt shall extend a minimum of 13/16 of an inch in length beyond the strike edge of the door and protrude into the doorjamb.

This section shall not apply to horizontal sliding doors. Existing dead bolts of at least one-half inch in length shall satisfy the requirements of this section. Existing locks with a thumb-turn deadlock that have a strike plate attached to the doorjamb and a latch bolt that is held in a vertical position by a guard bolt, a plunger, or an auxiliary mechanism shall also satisfy the requirements of this section. These locks, however, shall be replaced with a dead bolt at least 13/16 of an inch in length the first time after July 1, 1998, that the lock requires repair or replacement.

(2) Install and maintain operable window security or locking devices for windows that are designed to be opened. Louvered windows, casement windows, and all windows more than 12 feet vertically or six feet horizontally from the ground, a roof, or any other

platform are excluded from this subdivision.

(3) Install locking mechanisms that comply with applicable fire and safety codes on the exterior doors that provide ingress or egress to common areas with access to dwelling units in multifamily developments. This paragraph does not require the installation of a door or gate where none exists on January 1, 1998.

(b) The tenant shall be responsible for notifying the owner or his or her authorized agent when the tenant becomes aware of an inoperable dead bolt lock or window security or locking device in the dwelling unit. The landlord, or his or her authorized agent, shall not be liable for a violation of subdivision (a) unless he or she fails to correct the violation within a reasonable time after he or she either has actual notice of a deficiency or receives notice of a deficiency.

(c) On and after July 1, 1998, the rights and remedies of tenant for a violation of this section by the landlord shall include those available pursuant to Sections 1942, 1942.4, and 1942.5, an action for breach of contract, and an action for injunctive relief pursuant to Section 526 of the Code of Civil Procedure. Additionally, in an unlawful detainer action, after a default in the payment of rent, a tenant may raise the violation of this section as an affirmative defense and shall have a right to the remedies provided by Section 1174.2 of the Code of Civil Procedure.

(d) A violation of this section shall not broaden, limit, or otherwise affect the duty of care owed by a landlord pursuant to existing law, including any duty that may exist pursuant to Section 1714. The delayed applicability of the requirements of subdivision (a) shall not affect a landlord's duty to maintain the premises in safe condition.

(e) Nothing in this section shall be construed to affect any authority of any public entity that may otherwise exist to impose any additional security requirements upon a landlord.

(f) This section shall not apply to any building which has been designated as historically significant by an appropriate local, state, or federal governmental jurisdiction.

(g) Subdivisions (a) and (b) shall not apply to any building intended for human habitation which is managed, directly or indirectly, and controlled by the Department of Transportation. This exemption shall not be construed to affect the duty of the Department of Transportation to maintain the premises of these buildings in a safe condition or abrogate any express or implied statement or promise of the Department of Transportation to provide secure premises. Additionally, this exemption shall not apply to residential dwellings acquired prior to July 1, 1997, by the Department of Transportation to complete construction of state highway routes 710 and 238 and related interchanges.

1941.4.

The lessor of a building intended for the residential occupation of human beings shall be responsible for installing at least one usable telephone jack and for placing and maintaining the inside telephone wiring in good working order, shall ensure that the inside telephone wiring meets the applicable standards of the most recent National Electrical Code as adopted by the Electronic Industry Association, and shall make any

required repairs. The lessor shall not restrict or interfere with access by the telephone utility to its telephone network facilities up to the demarcation point separating the inside wiring.

"Inside telephone wiring" for purposes of this section, means that portion of the telephone wire that connects the telephone equipment at the customer's premises to the telephone network at a demarcation point determined by the telephone corporation in accordance with orders of the Public Utilities Commission.

1942.

(a) If within a reasonable time after written or oral notice to the landlord or his agent, as defined in subdivision (a) of Section 1962, of dilapidations rendering the premises untenantable which the landlord ought to repair, the landlord neglects to do so, the tenant may repair the same himself where the cost of such repairs does not require an expenditure more than one month's rent of the premises and deduct the expenses of such repairs from the rent when due, or the tenant may vacate the premises, in which case the tenant shall be discharged from further payment of rent, or performance of other conditions as of the date of vacating the premises. This remedy shall not be available to the tenant more than twice in any 12-month period.

(b) For the purposes of this section, if a tenant acts to repair and deduct after the 30th day following notice, he is presumed to have acted after a reasonable time. The presumption established by this subdivision is a rebuttable presumption affecting the burden of producing evidence and shall not be construed to prevent a tenant from repairing and deducting after a shorter notice if all the circumstances require shorter notice.

(c) The tenant's remedy under subdivision (a) shall not be available if the condition was caused by the violation of Section 1929 or 1941.2.

(d) The remedy provided by this section is in addition to any other remedy provided by this chapter, the rental agreement, or other applicable statutory or common law.

1942.1.

Any agreement by a lessee of a dwelling waiving or modifying his rights under Section 1941 or 1942 shall be void as contrary to public policy with respect to any condition which renders the premises untenantable, except that the lessor and the lessee may agree that the lessee shall undertake to improve, repair or maintain all or stipulated portions of the dwelling as part of the consideration for rental.

The lessor and lessee may, if an agreement is in writing, set forth the provisions of Sections 1941 to 1942.1, inclusive, and provide that any controversy relating to a condition of the premises claimed to make them untenantable may by application of either party be submitted to arbitration, pursuant to the provisions of Title 9 (commencing with Section 1280), Part 3 of the Code of Civil Procedure, and that the costs of such arbitration shall be apportioned by the arbitrator between the parties.

1942.3.

(a) In any unlawful detainer action by the landlord to recover possession from a tenant, a rebuttable presumption affecting the burden of producing evidence that the landlord has breached the habitability requirements in Section 1941 is created if all of the following conditions exist:

(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1.

(2) A public officer or employee who is responsible for the enforcement of any housing law has notified the landlord, or an agent of the landlord, in a written notice issued after inspection of the premises which informs the landlord of his or her obligations to abate the nuisance or repair the substandard conditions.

(3) The conditions have existed and have not been abated 60 days beyond the date of issuance of the notice specified in paragraph (2) and the delay is without good cause.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2.

(b) The presumption specified in subdivision (a) does not arise unless all of the conditions set forth therein are proven, but failure to so establish the presumption shall not otherwise affect the right of the tenant to raise and pursue any defense based on the landlord's breach of the implied warranty of habitability.

(c) The presumption provided in this section shall apply only to rental agreements or leases entered into or renewed on or after January 1, 1986.

1942.4.

(a) A landlord of a dwelling may not demand rent, collect rent, issue a notice of a rent increase, or issue a three-day notice to pay rent or quit pursuant to subdivision (2) of Section 1161 of the Code of Civil Procedure, if all of the following conditions exist prior to the landlord's demand or notice:

(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1 or violates Section 17920.10 of the Health and Safety Code, or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety Code because conditions listed in that section exist to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants of the dwelling.

(2) A public officer or employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions.

(3) The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph (2) and the delay is without good cause. For

purposes of this subdivision, service shall be complete at the time of deposit in the United States mail.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2.

(b) (1) A landlord who violates this section is liable to the tenant or lessee for the actual damages sustained by the tenant or lessee and special damages of not less than one hundred dollars ($100) and not more than five thousand dollars ($5,000).

(2) The prevailing party shall be entitled to recovery of reasonable attorney's fees and costs of the suit in an amount fixed by the court.

(c) Any court that awards damages under this section may also order the landlord to abate any nuisance at the rental dwelling and to repair any substandard conditions of the rental dwelling, as defined in Section 1941.1, which significantly or materially affect the health or safety of the occupants of the rental dwelling and are uncorrected. If the court orders repairs or corrections, or both, the court's jurisdiction continues over the matter for the purpose of ensuring compliance.

(d) The tenant or lessee shall be under no obligation to undertake any other remedy prior to exercising his or her rights under this section.

(e) Any action under this section may be maintained in small claims court if the claim does not exceed the jurisdictional limit of that court.

(f) The remedy provided by this section may be utilized in addition to any other remedy provided by this chapter, the rental agreement, lease, or other applicable statutory or common law. Nothing in this section shall require any landlord to comply with this section if he or she pursues his or her rights pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

CONNECTICUT

Sec. 47a-7. Landlord's responsibilities.

(a) A landlord shall:

(1) Comply with the requirements of chapter 368o and all applicable building and housing codes materially affecting health and safety of both the state or any political subdivision thereof;

(2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant, a member of his family or other person on the premises with his consent, in which case such duty shall be the responsibility of the tenant;

(3) keep all common areas of the premises in a clean and safe condition;

(4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances and elevators, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(6) supply running water and reasonable amounts of hot water at all times and reasonable heat except if the building which includes the dwelling unit is not required by law to be equipped for that purpose or if the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection.

(b) If any provision of any municipal ordinance, building code or fire code requires a greater duty of the landlord than is imposed under subsection (a) of this section, then such provision of such ordinance or code shall take precedence over the provision requiring such lesser duty in said subsection.

(c) The landlord and tenant of a single-family residence may agree in writing that the tenant perform the landlord's duties specified in subdivisions (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, or remodeling, provided the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord and tenant of a dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling if

(1) the agreement of the parties is entered into in good faith;

(2) the agreement is in writing;

(3) the work is not necessary to cure noncompliance with subdivisions (1) and (2) of subsection (a) of this section; and (4) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

Sec. 47a-12. Breach of agreement by landlord. Tenant's remedies.

(a) If there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 47a-7 which materially affects health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach. If the breach is not remedied within fifteen days after receipt of the notice, the rental agreement shall terminate on such date. If substantially the same act or omission which constituted a prior noncompliance of which notice was given, recurs within six months of the first act of noncompliance, the tenant may terminate the rental agreement upon at least fourteen days written notice specifying (1) the date the breach complained of occurred and (2) the date the tenant intends to terminate the rental agreement by vacating the premises, which date shall be within thirty days of such breach.

(b) The tenant may not terminate the rental agreement under subsection (a) of this section for a condition caused by the wilful or negligent act or omission of such tenant, a member of his family, or other person on the premises with his consent.

(c) This section shall apply only to leases in which the term of the tenancy is more than one month.

(d) Nothing in this section shall in any way restrict the tenant's use of other remedies available to him.

Sec. 47a-14h. Action by individual tenant to enforce landlord's responsibilities. Payment of rent into court.

(a) Any tenant who claims that his landlord has failed to perform his legal duties, as required by section 47a-7 or subdivisions (1) to (13), inclusive, of subsection (a) of section 21-82, may institute an action in the superior court having jurisdiction over housing matters in the judicial district in which he resides to obtain the relief authorized by this section and sections 47a-20 and 47a-68. No tenant may institute an action under this section if a valid notice to quit possession or occupancy based upon nonpayment of rent has been served on him prior to his institution of an action under this section or if a valid notice to quit possession or occupancy based on any other ground has been served on him prior to his making the complaint to the agency referred to in subsection (b) of this section, provided any such notice to quit is still effective.

(b) The action shall be instituted by filing a complaint, under oath, with the clerk of the court. The complaint shall allege

(1) the name of the tenant;

(2) the name of the landlord;

(3) the address of the premises;

(4) the nature of the alleged violation of section 47a-7; and

(5) the dates when rent is due under the rental agreement and the amount due on such dates. The complaint shall also allege that at least twenty-one days prior to the date on which the complaint is filed, the tenant made a complaint concerning the premises to the municipal agency, in the municipality where the premises are located, responsible for enforcement of the housing code or, if no housing code exists, of the public health code, or to the agency responsible for enforcement of the code or ordinance alleged to have been violated, or to another municipal agency which referred such complaint to the municipal agency responsible for enforcement of such code or ordinance. In the case of a mobile manufactured home located in a mobile manufactured home park, such complaint may be made to the Commissioner of Consumer Protection. The entry fee shall be twenty-five dollars, which may be waived in accordance with section 52-259b. Such entry fee shall be a taxable cost of the action. If, on the same day, more than one tenant from the same building or complex institutes an action under this section and pays the entry fee for such action, unless such fee is waived, the actions shall be treated as a single action. No recognizance or bond shall be required.

(c) Upon receipt of the complaint, the clerk shall promptly set the matter down for hearing to be held not more than fourteen days after the filing of the complaint or the return of service, whichever is later, and shall cause a copy of the complaint and the notice of the action to be sent separately by certified mail, return receipt requested, to

(1) each landlord named in the complaint and

(2) the director of the municipal or state agency to which the tenant has alleged, pursuant to subsection (b) of this section, that a complaint concerning the premises has been made. At such hearing, the agency notified pursuant to subdivision (2) of this subsection shall submit to the court the inspection report prepared as a result of the complaint made by the tenant.

(d) If proof of service is not returned to the clerk, the complaint shall be served by the plaintiff in accordance with section 52-57.

(e) The complainant may seek and the court may order interim or final relief including, but not limited to, the following:

(1) An order compelling the landlord to comply with his duties under local, state or federal law;

(2) an order appointing a receiver to collect rent or to correct conditions in the property which violate local, state or federal law;

(3) an order staying other proceedings concerning the same property;

(4) an award of money damages, which may include a retroactive abatement of rent paid pursuant to subsection (h) of this section; and

(5) such other relief in law or equity as the court may deem proper. If the court orders a retroactive abatement of rent pursuant to subdivision (4) of this subsection and all or a

portion of the tenant's rent was deposited with the court pursuant to subsection (h) by a housing authority, municipality, state agency or similar entity, any rent ordered to be returned shall be returned to the tenant and such entity in proportion to the amount of rent each deposited with the court pursuant to subsection (h).

(f) The landlord, by counterclaim, may request and the court may issue an order compelling the tenant to comply with his duties under section 47a-11.

(g) The court, in ordering interim or final relief, may order that accrued payments of rent or use and occupancy held by the clerk be used for the repair of the building or be distributed in accordance with the rights of the parties.

(h) On each rent due date on or after the date when the complaint is filed with the clerk of the court, or within nine days thereafter or, in the case of a week-to-week tenancy, within four days thereafter, the tenant shall deposit with the clerk of the court an amount equal to the last agreed-upon rent. If all or a portion of the tenant's rent is being paid to the landlord by a housing authority, municipality, state agency or similar entity, this requirement shall be satisfied if the tenant deposits an amount equal to such tenant's portion of the last agreed-upon rent with the clerk. The court may make such entity a party to the action. The clerk shall accept such payment of rent and shall provide the tenant with a receipt. Payment to the clerk shall, for all purposes, be the equivalent of having made payment to the landlord himself. No landlord may maintain an action against a tenant to recover possession for nonpayment of rent if an amount equal to the rent due has been received by the clerk. When the complaint and notice of the action are served pursuant to subsection (c) or (d) of this section, the clerk shall promptly notify the landlord of the receipt of any such payment and of the prohibition against maintaining an action to recover possession for nonpayment of rent. If the complainant fails to make such payment of rent, the court may, after proper notice, upon its own motion or upon motion by the landlord, dismiss the complaint.

(i) The landlord may, at any time, move for the termination of payment into court and the clerk shall promptly schedule a hearing on such motion. If the court finds that the violations of section 47a-7 have been corrected, it shall enter a judgment with respect to the rights and obligations of the parties in the action and with respect to the distribution of any money held by the clerk.

(j) Nothing in this section and sections 47a-20 and 47a-68 shall be construed to limit or restrict in any way any rights or remedies which may be available to a tenant, to the state or to a municipality under any other law.

(k) The judges of the Superior Court may, in accordance with the provisions of section 51-14, adopt rules for actions brought under this section and sections 47a-20 and 47a-68, including the promulgation of a simplified form for the bringing of such actions.

(l) For the purposes of this section, "tenant" includes each resident of a mobile manufactured home park, as defined in section 21-64, including a resident who owns his own home, and "landlord" includes a "licensee" and an "owner" of a mobile manufactured home park, as defined in section 21-64.

Sec. 47a-16. When landlord may enter rented unit.

(a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed to repairs, alterations or improvements, supply necessary or agreed to services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

(b) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(c) A landlord shall not abuse the right of entry or use such right of entry to harass the tenant. The landlord shall give the tenant reasonable written or oral notice of his intent to enter and may enter only at reasonable times, except in case of emergency.

(d) A landlord may not enter the dwelling unit without the consent of the tenant except

(1) in case of emergency,

(2) as permitted by section 47a-16a,

(3) pursuant to a court order, or

(4) if the tenant has abandoned or surrendered the premises.

DELAWARE

§ 5301. Landlord obligation; rental agreement.

(a) A rental agreement shall not provide that a tenant:

(1) Agrees to waive or forego rights or remedies under this Code;

(2) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by subsection (a) of this section which is included in the rental agreement is unenforceable. If a landlord attempts to enforce provisions of a rental agreement known by the landlord to be prohibited by subsection (a) of this section the tenant may bring an action to recover an amount equal to 3 months rent, together with costs of suit but excluding attorneys' fees. (70 Del. Laws, c. 513, § 2.)

§ 5302. Tenant remedy; termination at the beginning of term.

(a) If the landlord fails to substantially conform to the rental agreement, or if there is a material noncompliance with any code, statute, ordinance or regulation governing the maintenance or operation of the premises, the tenant may, on written notice to the landlord, terminate the rental agreement and vacate the premises at any time during the 1st month of occupancy, so long as the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition or conditions which would justify termination by the tenant under this section.

(b) If the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord, to correct all or any part of the condition or conditions which would justify termination by the tenant under this section; and if substantially the same act or omission which constitutes a prior noncompliance, of which prior notice was given under subsection (a) of this section, recurs within 6 months, the tenant may terminate the rental agreement upon at least 15 days' written notice, which notice shall specify the breach and the date of termination of the rental agreement.

(c) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition; and, if the landlord does not remedy the condition within 15 days, the tenant may terminate the rental agreement. The tenant must then initiate an action in the Justice of the Peace Court seeking a determination that the landlord has breached the rental agreement by depriving the tenant of a substantial part of the benefit or enjoyment of the bargain and may seek damages, including a rent deduction from the date written notice of the condition was given to the landlord.

(d) If the condition referred to in subsection (c) of this section was caused wilfully or

negligently by the landlord, the tenant may recover the greater of:

(1) The difference between the rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to 1 month's rent and the security deposit.

(e) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of tenant's family or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement. (70 Del. Laws, c. 513, § 2.)

§ 5303. Landlord obligation to supply possession of rental unit.

The landlord shall supply the rental unit bargained for at the beginning of the term and shall put the tenant into full possession. (70 Del. Laws, c. 513, § 2.)

§ 5304. Tenant's remedies for failure to supply possession.

(a) If the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter and:

(1) Upon notice to the landlord, the tenant may terminate the rental agreement at any time the tenant is unable to enter into possession; and the landlord shall return all monies paid to the landlord for the rental unit, including any pre-paid rent, pet deposit and security deposit; and

(2) If such inability to enter is caused wrongfully by the landlord or by anyone with the landlord's consent or license due to substantial failure to conform to existing building and housing codes, the tenant may recover reasonable expenditures necessary to secure equivalent substitute housing for up to 1 month. In no event shall such expenditures under this subsection exceed the agreed upon rent for 1 month. Such expenditures may be recovered by appropriate action or proceeding or by deduction from the rent upon the submission of receipts for same.

(b) If such inability to enter results from the wrongful occupancy of a holdover tenant and the landlord has not brought an action for summary possession against such holdover tenant, the entering tenant may maintain an action for summary possession against the holdover tenant. The expenses of such proceeding and substitute housing expenditures may be claimed from the rent in the manner specified in subsection (a)(2) of this section. (70 Del. Laws, c. 513, § 2.)

§ 5305. Landlord obligations relating to the rental unit.

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

(1) Comply with all applicable provisions of any state or local statute, code,

regulation or ordinance governing the maintenance, construction, use or appearance of the rental unit and the property of which it is a part;

(2) Provide a rental unit which shall not endanger the health, welfare or safety of the tenants or occupants and which is fit for the purpose for which it is expressly rented;

(3) Keep in a clean and sanitary condition all common areas of the buildings, grounds, facilities and appurtenances thereto which are maintained by the landlord;

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

(5) Maintain all electrical, plumbing and other facilities supplied by the landlord in good working order.

(b) If the rental agreement so specifies, the landlord shall:

(1) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage and arrange for the frequent removal of such waste; and

(2) Supply or cause to be supplied, water, hot water, heat and electricity to the rental unit.

(c) The landlord and tenant may agree by a conspicuous writing, separate from the rental agreement, that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling, but only if:

(1) The particular work to be performed by the tenant is for the primary benefit of the rental unit; and

(2) The work is not necessary to bring a noncomplying rental unit into compliance with a building or housing code, ordinance or the like; and

(3) Adequate consideration, apart from any provision of the rental agreement, or a reduction in the rent is exchanged for the tenant's promise. In no event may the landlord treat any agreement under this subsection as a condition to any provision of rental agreements; and

(4) The agreement of the parties is entered into in good faith and is not for the purpose of evading an obligation of the landlord.

(d) Evidence of compliance with the applicable building and housing codes shall be prima facie evidence that the landlord has complied with this chapter or with any other chapter of Part III of this title. (70 Del. Laws, c. 513, § 2.)

§ 5306. Tenant's remedies relating to the rental unit; termination.

(a) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition and, if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement. If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court.

(b) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of the family or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

(c) If the condition referred to in subsection (a) of this section was caused wilfully or negligently by the landlord, the tenant may recover the greater of:

(1) The difference between rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to 1 month's rent and the security deposit. (70 Del. Laws, c. 513, § 2.)

§ 5307. Tenant's remedies relating to the rental unit; repair and deduction from rent.

(a) If the landlord of a rental unit fails to repair, maintain or keep in a sanitary condition the leased premises or perform in any other manner required by statute, code or ordinance, or as agreed to in the a rental agreement; and, if after being notified in writing by the tenant to do so, the landlord:

(1) Fails to remedy such failure within 30 days from the receipt of the notice; or

(2) Fails to initiate reasonable corrective measures where appropriate, including, but not limited to, the obtaining of an estimate of the prospective costs of the correction, within 10 days from the receipt of the notice;

Then the tenant may immediately do or have done the necessary work in a professional manner. After the work is done, the tenant may deduct from the rent a reasonable sum, not exceeding $200, or one-half of 1 month's rent, whichever is less, for the expenditures by submitting to the landlord copies of those receipts covering at least the sum deducted.

(b) In no event may a tenant repair or cause anything to be repaired at the landlord's expense when the condition complained of was caused by the want of due care by the tenant, a member of the tenant's family or another person on the premises with the tenant's consent.

(c) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the remedies provided in this section.

(d) The tenant is liable for any damage to persons or property where such damage was caused by the tenant or by someone authorized by the tenant in making said repairs. (70 Del. Laws, c. 513, § 2.)

§ 5308. Essential services; landlord obligation and tenant remedies.

(a) If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:

(1) Upon written notice of the continuation of the problem to the landlord, immediately terminate the rental agreement; or

(2) Upon written notice to the landlord, keep two-thirds per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.

(b) If the tenant has given the notice required under subsection (a) of this section and remains in the rental unit and the landlord still fails to provide water, hot water, heat and electricity to the rental unit as specified in the applicable city or county housing code in violation of the rental agreement, the tenant may:

(1) Upon written notice to the landlord, immediately terminate the rental agreement; or

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

(3) Upon written notice to the landlord, tenant may withhold two-thirds per diem rent accruing during any period when hot water, heat, water or equivalent substitute housing is not supplied.

(c) Rent withholding does not act as a bar to the subsequent recovery of damages by a tenant if those damages exceed the amount withheld.

(d) Where a landlord files an action for summary possession, claiming that a tenant has wrongfully withheld rent or deducted money from rent under this section and the court so finds, the landlord shall be entitled to receive from the tenant either possession of the premises or an amount of money equal to the amount wrongfully withheld

("damages") or, if the court finds the tenant acted in bad faith, an amount of money equal to double the amount wrongfully withheld ("double damages"). In the event the court awards damages or double damages and court costs excluding attorneys' fees, then the court shall issue an order requiring such damages or double damages to be paid by the tenant to the landlord within 10 days from the date of the court's judgment. If such damages are not paid in accordance with the court's order, the judgment for damages or double damages, together with court costs, shall become a judgment for the amount withheld, plus summary possession, without further notice to the tenant. (70 Del. Laws, c. 513, § 2.)

§ 5309. Fire and casualty damage; landlord obligation and tenant remedies.

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within 1 week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or

(2) If continued occupancy is lawful, vacate any part of the premises rendered unusable by fire or casualty, in which case the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit.

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and pre-paid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty. (70 Del. Laws, c. 513, § 2.)

§ 5310. "Assurance money" prohibited.

(a) In every transaction wherein an application is made by a prospective tenant to lease a dwelling unit, the prospective landlord or owner of the dwelling unit shall not ask for, nor receive, any "assurance money" or other payment which is not an application fee, security deposit, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain. The prospective landlord shall not charge the prospective tenant, as a fee for any credit or other type of investigation, any more than the specific cost of such investigation. For purposes of this section, "assurance money" shall mean any payment to the prospective landlord by a prospective tenant, except an application fee, a payment in the way of a security deposit, pet deposit or similar deposit, reserving the dwelling unit for the prospective tenant for a time certain or the reimbursing of the specific sums expended by the landlord in credit or other investigations.

(b) Each landlord shall retain, for a period of 6 months, the records of each application made by any prospective tenant. Upon any complaint of a violation of this section, the Consumer Protection Unit of the Attorney General's office shall investigate the same, shall interview tenants of the landlord and shall, under appropriate search warrant, have the right to investigate all records of the landlord pertaining to applications made within the preceding 6 months. If such investigation reveals good cause for the Attorney General's office to believe there has been a violation of this section, the Attorney General's office may issue such cease and desist orders in accordance with § 2517 of Title 29 as are required to remedy the violation. (70 Del. Laws, c. 513, § 2.)

§ 5311. Fees.

Except for an optional service fee for actual services rendered, such as a pool fee or tennis court fee, a landlord shall not charge to a tenant any nonrefundable fee as a condition for occupancy of the rental unit. (70 Del. Laws, c. 513, § 2.)

§ 5312. Metering and charges for utility services.

(a) A landlord may install, operate and maintain meters or other appliances for measurement to determine the consumption of utility services by each rental unit. Only if the rental agreement so provides, and in compliance with this section, may a landlord charge a tenant separately for the utility services as measured by such meter or other appliance. With the exception of metering systems already in use prior to July 17, 1996, a landlord shall not separately charge a tenant for any utility service, unless such utility service is separately metered. The metering system may be inspected by and must be approved by the Division of Weights and Measures.

(b) No landlord shall require that any tenant contract directly with the provider of a utility service for service to a tenant or to a rental unit, unless such rental unit is separately metered. No landlord who purchases utility services in bulk shall charge any tenant individually for utility services, unless such utility services are either individually metered or the cost of such services is included as part of each monthly rental payment, as provided for in the rental agreement.

(c) A landlord who charges a tenant separately for utility services under this section shall not charge the tenant an amount for such services which exceeds the actual cost of the utility service as determined by the cost of the service charged by the provider to the landlord or to any company owned in whole or in part by the landlord.

(d) Any tenant who is charged and who pays for utility services separately to the landlord shall be entitled to inspect the bills and records upon which such charges were calculated, during the landlord's regular business hours at the landlord's regular business office. A landlord shall retain such bills and records for 1 year from the date upon which tenants were billed.

(e) Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code. With respect to security deposits, and unless the rental agreement otherwise provides, the rights and obligations of the parties as to payment and nonpayment of utility charges shall be enforced in the same manner as the rights and

obligations of the parties relating to payment and nonpayment of rent. A landlord shall not discontinue or terminate utility service for nonpayment of rent, utility charges or other breach.

(f) A landlord who charges separately for utilities in accordance with this section shall bill the tenant for such charges not less frequently than monthly, and shall use reasonable efforts to obtain actual readings of meters or appliances for measurements, which readings shall reasonably coincide with the landlord's bulk billing. If, despite reasonable effort, a landlord is unable to obtain an actual reading, the landlord may estimate the tenant's utility consumption and bill the tenant for such estimated amount; provided however, that a landlord may not send more than 2 consecutive estimated billings. Notwithstanding the foregoing, an actual reading shall be made upon the commencement of the lease and at the expiration or termination of the lease.

(g)(1) A landlord, upon request by a tenant, shall cause to be examined or tested the meter or appliance for measurement. If the meter or appliance so tested or examined is found to be accurate within commercially reasonable limits, the costs and expenses of such test or examination shall be paid by the tenant as additional rent; but if the meter or appliance is found to be not accurate, then such costs and expenses shall be borne by the landlord, who shall forthwith replace the inaccurate meter or other appliance.

(2) In addition to those rights and powers vested by law in the Consumer Protection Unit of the Attorney General's office or its successor agency, the Attorney General's office may enter, by and through its agents, experts or examiners, upon any premises for the purpose of making the examination and tests provided for in this section, and may set up and use on such premises any apparatus and appliances necessary therefor.

(h) A landlord who installs, operates and maintains meters or other appliances for measurement and who bills tenants separately for utilities, shall not be deemed a public utility, nor shall the Public Service Commission have any authority, power or jurisdiction over such landlords or their practices in connection with the installation, operation and maintenance of meters or other appliances for measurement, the reading of meters, calculation and determination of charges for utility services or otherwise. The Consumer Protection Unit of the Attorney General's office shall have authority to enforce this section. (70 Del. Laws, c. 513, § 2.)

§ 5313. Unlawful ouster or exclusion of tenant.

If removed from the premises or excluded therefrom by the landlord or the landlord's agent, except under color of a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees. (70 Del. Laws, c. 513, § 2.)

§ 5314. Tenant's right to early termination.

(a) Except as is otherwise provided in this Part, whenever either party to a rental

agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and all parties shall thereupon discharge any remaining obligations as soon as is practicable.

(b) Upon 30 days' written notice, which 30-day period shall begin on the 1st day of the month following the day of actual notice, the tenancy may be terminated:

(1) By the tenant, whenever a change in location of the tenant's employment with the tenant's present employer requires a change in the location of the tenant's residence in excess of 30 miles;

(2) By the tenant, whenever the serious illness of the tenant or the death or serious illness of a member of the tenant's immediate family, residing therein, requires a change in the location of the tenant's residence on a permanent basis;

(3) By the tenant, when the tenant is accepted for admission to a senior citizens' housing facility, including subsidized public or private housing, or a group or cooperative living facility or retirement home;

(4) By the tenant, when the tenant is accepted for admission into a rental unit subsidized by a governmental entity or by a private nonprofit corporation, including subsidized private or public housing;

(5) By the tenant who, after the execution of such rental agreement, enters the military service of the United States on active duty;

(6) By a tenant who is the victim of domestic abuse, sexual offenses, stalking, or a tenant who has obtained or is seeking relief from domestic violence or abuse from any court, police agency, or domestic violence program or service; or

(7) By the surviving spouse or personal representative of the estate of the tenant, upon the death of the tenant. (70 Del. Laws, c. 513, § 2; 75 Del. Laws, c. 293, § 2.)

§ 5315. Taxes paid by tenant; setoff against rent; recovery from owner.

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use, or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant. (25 Del. C. 1953, § 6502; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 7.)

GEORGIA

44-7-13.

The landlord must keep the premises in repair. He shall be liable for all substantial improvements placed upon the premises by his consent.

44-7-14.1.

(a) As used in this Code section, the term "utilities" means heat, light, and water service.

(b) It shall be unlawful for any landlord knowingly and willfully to suspend the furnishing of utilities to a tenant until after the final disposition of any dispossessory proceeding by the landlord against such tenant.

(c) Any person who violates subsection (b) of this Code section shall, upon conviction, be assessed a fine not to exceed $500.00.

44-7-15.

The destruction of a tenement by fire or the loss of possession by any casualty not caused by the landlord or from a defect of his title shall not abate the rent contracted to be paid.

FLORIDA

83.51. Landlord's obligation to maintain premises

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

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. However, the landlord shall not be required to maintain a mobile home or other structure owned by the tenant.

The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal,

water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

83.682. Termination of rental agreement by a servicemember

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

(f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.

(3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the

servicemember's commanding officer and a copy of the servicemember's death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

HAWAII

HRS Section 521-53 Access.

(a) The tenant shall not unreasonably withhold the tenant's consent to the landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply services as agreed; or exhibit the dwelling unit to prospective purchasers, mortgagees, or tenants.

(b) The landlord shall not abuse this right of access nor use it to harass the tenant. Except in case of emergency or where impracticable to do so, the landlord shall give the tenant at least two days notice of the landlord's intent to enter and shall enter only during reasonable hours.

(c) The landlord shall have no other right of entry, except by court order, unless the tenant appears to have abandoned the premises, or as permitted by section 521-70(b).

HRS Section 521-61 Tenant's remedies for failure by landlord to supply possession.

(a) If the landlord fails to put the tenant into possession of the dwelling unit in the agreed condition at the beginning of the agreed term:

(1) The tenant shall not be liable for the rent during any period the tenant is unable to enter into possession;

(2) At any time during the period the tenant is so unable to enter into possession the tenant may notify the landlord that the tenant has terminated the rental agreement; and

(3) The tenant shall have the right to recover damages in the amount of reasonable expenditures necessary to secure adequate substitute housing, the recovery to be made either by action brought in the district court or by deduction from the rent upon submission to the landlord of receipts totaling at least

(A) The amount of abated rent; plus

(B) The amount claimed against the rent; or

(4) If the inability to enter results from the wrongful holdover of a prior occupant, the tenant may maintain a summary proceeding in the district court for possession.

(b) In any district court proceeding brought by the tenant under this section the court may award the tenant substitute housing expenditures, reasonable court costs, and attorney's fees.

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HRS Section 521-62 Tenant's remedy of termination at beginning of term.

If the landlord fails to conform to the rental agreement, or is in material noncompliance with section 521-42(a), the tenant may, on notice to the landlord, terminate the rental

agreement and vacate the dwelling unit at any time during the first week of occupancy. The tenant shall retain such right to terminate beyond the first week of occupancy so long as the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition which would justify termination by the tenant under this section.

HRS Section 521-63 Tenant's remedy of termination at any time; unlawful removal or exclusion.

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

(b) If the condition referred to in subsection (a) was caused wilfully or negligently by the landlord, the tenant may recover any damages sustained as a result of the condition.

(c) If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to two months rent or free occupancy for two months, and the cost of suit, including reasonable attorney's fees. If the rental agreement is terminated, the landlord shall comply with section 521-44(c). The court may also order any injunctive or other equitable relief it deems proper. If the court determines that the removal or exclusion by the landlord was with cause or was authorized by court order, the court may award the landlord the cost of suit, including reasonable attorney's fees if the attorney is not a salaried employee of the landlord or the landlord's assignee.

HRS Section 521-64 Tenant's remedy of repair and deduction for minor defects.

(a) The landlord, upon written notification by the department of health or other state or county agencies that there exists a condition on the premises which constitutes a health or safety violation, shall commence repairs of thecondition within five business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence the repairs within five business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. Health or safety violations for the purpose of this section means any condition on the premises which is in noncompliance with section 521-42(a)(1).

(b) If the landlord fails to perform in the manner specified, in subsection (a), the tenant may:

(1) Immediately do or have done the necessary repairs in a competent manner, and upon submission to the landlord of receipts amounting to at least the sum deducted, deduct

from the tenant's rent not more than $500 for the tenant's actual expenditures for work done to correct the health or safety violation; or

(2) Submit to the landlord, at least five business before having the work done, written signed estimates from each of two qualified workers and proceed to have done the necessary work by the worker who provides the lower estimate; provided that the landlord may require in writing a reasonable substitute worker or substitute materials, and upon submission to the landlord of receipts amounting to at least the sum deducted, the tenant may deduct $500 or one month's rent, whichever is greater, for the tenant's actual expenditures for work done to correct the health or safety violation.

(c) The landlord, upon written notification by the tenant of any defective condition on the premises which is in material noncompliance with section 521-42(a) or with the rental agreement, shall commence repairs of the condition within twelve business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within twelve business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. In any case involving repairs, except those required due to misuse by the tenant, to electrical, plumbing, or other facilities, including major appliances provided by the landlord pursuant to the rental agreement, necessary to provide sanitary and habitable living conditions, the landlord shall commence repairs within three business days of receiving oral or written notification, with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within three business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reasons for the delay and set a reasonable tentative date on which repairs will commence.

(d) If the landlord fails to perform in the manner specified in subsection (c), the tenant may immediately do or have done the necessary work in a competent manner and upon submission to the landlord of receipts amounting to at least the sums deducted, deduct from the tenant's rent not more than $500 for the tenant's actual expenditures for work done to correct the defective condition.

(e) At the time the tenant initially notifies the landlord under subsection (c), the tenant shall list every condition that the tenant knows or should know of noncompliance under subsection (c), in addition to the objectionable condition that the tenant then intends to correct or have corrected at the landlord's expense. Failure by a tenant to list such a condition that the tenant knew of or should have known of shall estop the tenant from requiring the landlord to correct it and from having it corrected at the landlord's expense under this section for a period of six months after the initial notification to the landlord. Total correction and repair work costs under this section chargeable to the landlord's expense during each six-month period shall not exceed an amount equal to three months' rent.

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

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

HRS Section 521-65 Tenant's remedies for fire or casualty damage.

When the dwelling unit or any part of the premises or appurtenances reasonably necessary to the benefit and enjoyment thereof is rendered partially or wholly unusable by fire or other casualty which occurs without wilful fault on the part of the tenant or a member of the tenant's family, the tenant may:

(1) Immediately quit the premises and notify the landlord of the tenant's election to quit within one week after quitting, in which case the rental agreement shall terminate as of the date of quitting, but if the tenant falls to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's quitting or impossibility of further occupancy; or

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

HRS Section 521-73 Landlord's and tenant's remedies for abuse of access.

(a) The tenant shall be liable to the landlord for any damage proximately caused by the tenant's unreasonable refusal to allow access as provided in section 521-53(a).

(b) Except for an entry under an emergency such as fire, the landlord shall be liable to the tenant for any theft, casualty, or other damage proximately caused by an entry into the dwelling unit by the landlord or by another person with the permission or license of the landlord:

(1) When the tenant is absent and has, after having been notified by the landlord of a proposed entry or entries, refused consent to any such specific entry;

(2) Without the tenant's actual consent when the tenant is present and able to consent; or

(3) In any other case, when the damage suffered by the tenant is proximately caused by the landlord's negligence.

(c) In the event of repeated demands by the landlord for unreasonable entry, or any entry by the landlord or by another with the landlord's permission or license which is unreasonable and not consented to by the tenant:

(1) The tenant may treat such actions as grounds for termination of the rental agreement;

(2) Any circuit court judge on behalf of one or more of the tenants may issue an injunction against a landlord to enjoin violation of this subsection;

(3) Any circuit court judge hearing a dispute as set out in [paragraph] (2) may also assess a fine not to exceed $100.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent by a tenant to a particular entry, shall be void.

HRS Section 521-78 Rent trust fund.

(a) At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c), and in the case of a proceeding in which a rent increase is in issue, the amount of the rent prior to the increase; provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a signed, written instrument agreeing that the rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund. No deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter.

(b) If the tenant is unable to comply with the court's order under subsection (a) in paying the required amount of rent into the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding the sheriff or police officer to remove all persons from the premises, and to put the landlord, or the landlord's agent, into the full possession thereof.

(c) The court in which the dispute is being heard shall accept and hold in trust any rent deposited under this section and shall make such payments out of money collected as provided herein. The court shall order payment of such money collected or portion thereof to the landlord if the court finds that the rent is due and has not been paid to the landlord and that the tenant did not have any basis to withhold, deduct, or otherwise set off the rent not paid. The court shall order payment of such money collected or portion thereof to the tenant if the court finds that the rent is not due or has been paid, or that the tenant had a basis to withhold, deduct, or otherwise set off the rent not paid.

(d) The court shall, upon finding that either the landlord or the tenant raised the issue of payment or nonpayment of rent in bad faith, order that person to pay the other party reasonable interest on the rent deposited into the court.

ILLINOIS

(765 ILCS 742/) Residential Tenants' Right to Repair Act. _(765 ILCS 742/1) _Sec. 1. Short title. This Act may be cited as the Residential Tenants' Right to Repair Act.

(765 ILCS 742/5) _Sec. 5. Repair; deduction from rent. If a repair is required under a residential lease agreement or required under a law, administrative rule, or local ordinance or regulation, and the reasonable cost of the repair does not exceed the lesser of $500 or one'Äëhalf of the monthly rent, the tenant may notify the landlord in writing by registered or certified mail or other restricted delivery service to the address of the landlord or an agent of the landlord as indicated on the lease agreement; if an address is not listed, the tenant may send notice to the landlord's last known address of the tenant's intention to have the repair made at the landlord's expense. If the landlord fails to make the repair within 14 days after being notified by the tenant as provided above or more promptly as conditions require in the case of an emergency, the tenant may have the repair made in a workmanlike manner and in compliance with the appropriate law, administrative rule, or local ordinance or regulation. Emergencies include conditions that will cause irreparable harm to the apartment or any fixture attached to the apartment if not immediately repaired or any condition that poses an immediate threat to the health or safety of any occupant of the dwelling or any common area. After submitting to the landlord a paid bill from an appropriate tradesman or supplier unrelated to the tenant, the tenant may deduct from his or her rent the amount of the bill, not to exceed the limits specified by this Section and not to exceed the reasonable price then customarily charged for the repair. If not clearly indicated on the bill submitted by the tenant, the tenant shall also provide to the landlord in writing, at the time of the submission of the bill, the name, address, and telephone number for the tradesman or supplier that provided the repair services. A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or another person on the premises with the tenant's consent.

(765 ILCS 742/10)
Sec. 10. Exceptions. _(a) This Act does not apply to public housing as defined in Section 3(b) of the United States Housing Act of 1937, as amended from time to time, and any successor Act. _(b) This Act does not apply to condominiums. _(c) This Act does not apply to not'Äëfor'Äëprofit corporations organized for the purpose of residential cooperative housing. _(d) This Act does not apply to tenancies other than residential tenancies. _(e) This Act does not apply to owner'Äëoccupied rental property containing 6 or fewer dwelling units. _(f) This Act does not apply to any dwelling unit that is subject to the Mobile Home Landlord and Tenant Rights Act.

(765 ILCS 742/15) _Sec. 15. Tenant liabilities and responsibilities. The tenant is responsible for ensuring that: _(1) the repairs are performed in a workmanlike manner in compliance with the appropriate law, administrative rule, or local ordinance or regulation; _(2) the tradesman or supplier that is hired by the tenant to perform the repairs holds the appropriate valid license or certificate required by State or municipal law to make the repair; and _(3) the tradesman or supplier is adequately insured to cover any bodily harm or property damage that is caused by the negligence or substandard performance of the repairs by the tradesman or supplier. _The tenant is responsible for

any damages to the premises caused by a tradesman or supplier hired by the tenant. A tenant shall not be entitled to exercise the remedies provided for in this Act if the tenant does not comply with the requirements of this Section.

(765 ILCS 742/20) _Sec. 20. Defense to eviction. A tenant may not assert as a defense to an action for rent or eviction that rent was withheld under this Act unless the tenant meets all the requirements provided for in this Act.

(765 ILCS 742/25) _Sec. 25. Mechanics lien laws. For purposes of mechanics lien laws, repairs performed or materials furnished pursuant to this Act shall not be construed as having been performed or furnished pursuant to authority of or with permission of the landlord.

(765 ILCS 742/30) _Sec. 30. Home rule. A home rule unit may not regulate residential lease agreements in a manner that diminishes the rights of tenants under this Act. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

INDIANA

IC 32-31-8-5

Landlord obligations

Sec. 5. A landlord shall do the following:

(1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.

(2) Comply with all health and housing codes applicable to the rental premises.

(3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.

(4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:

Sec. 5. A landlord shall do the following:

(A) Electrical systems.

(B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.

(E) Elevators, if provided.

(F) Appliances supplied as an inducement to the rental agreement.

Tenant's cause of action to enforce landlord obligations

Sec. 6. (a) A tenant may bring an action in a court with jurisdiction to enforce an obligation of a landlord under this chapter.

(b) A tenant may not bring an action under this chapter unless the following conditions are met:

(1) The tenant gives the landlord notice of the landlord's noncompliance with a provision of this chapter.

(2) The landlord has been given a reasonable amount of time to make repairs or provide a remedy of the condition described in the tenant's notice. The tenant may not prevent the

landlord from having access to the rental premises to make repairs or provide a remedy to the condition described in the tenant's notice.

(3) The landlord fails or refuses to repair or remedy the condition described in the tenant's notice.

(c) This section may not be construed to limit a tenant's rights under IC 32-31-3, IC 32-31-5, or IC 32-31-6.

(d) If the tenant is the prevailing party in an action under this section, the tenant may obtain any of the following, if appropriate under the circumstances:

(1) Recovery of the following:

(A) Actual damages and consequential damages.

(B) Attorney's fees and court costs.

(2) Injunctive relief.

(3) Any other remedy appropriate under the circumstances.

(e) A landlord's liability for damages under subsection (d) begins when:

(1) the landlord has notice or actual knowledge of noncompliance; and

(2) the landlord has:

(A) refused to remedy the noncompliance; or

(B) failed to remedy the noncompliance within a reasonable amount of time following the notice or actual knowledge; whichever occurs first.

IOWA

562A.14 Landlord to supply possession of dwelling unit.

At the commencement of the term, the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and section 562A.15. The landlord may bring an action for possession against a person wrongfully in possession and may recover the damages provided in section 562A.34, subsection 3.

562A.15 Landlord to maintain fit premises.

1. The landlord shall:

a. Comply with the requirements of applicable building and housing codes materially affecting health and safety.

b. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.

c. Keep all common areas of the premises in a clean and safe condition. The landlord shall not be liable for any injury caused by any objects or materials which belong to or which have been placed by a tenant in the common areas of the premises used by the tenant.

d. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord.

e. Provide and maintain appropriate receptacles and conveniences, accessible to all tenants, for the central collection and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.

f. Supply running water and reasonable amounts of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

If the duty imposed by paragraph "*a*" of this subsection is greater than a duty imposed by another paragraph of this subsection, the landlord's duty shall be determined by reference to paragraph "*a*" of this subsection.

2. The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs "*e*" and "*f*" of subsection 1 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

3. The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only:

a. If the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;

b. If the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

4. The landlord shall not treat performance of the separate agreement described in subsection 3 as a condition to an obligation or performance of a rental agreement.

562A.19 Access.

1. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

2. The landlord may enter the dwelling unit without consent of the tenant in case of emergency.

3. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least twenty-four hours' notice of the landlord's intent to enter and enter only at reasonable times.

4. The landlord does not have another right of access except by court order, and as permitted by sections 562A.28 and 562A.29, or if the tenant has abandoned or surrendered the premises.

562A.21 Noncompliance by the landlord--in general.

1. Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 562A.15 materially affecting health and safety, the tenant may elect to commence an action under this section and shall deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate and the tenant shall surrender as provided in the notice subject to the following:

a. If the breach is remediable by repairs or the payment of damages or otherwise, and if the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

b. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement unless the landlord has exercised due diligence and effort to remedy the breach which gave rise to the noncompliance.

c. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

2. Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 562A.15 unless the landlord demonstrates affirmatively that the landlord has exercised due diligence and effort to remedy any noncompliance, and that any failure by the landlord to remedy any noncompliance was due to circumstances reasonably beyond the control of the landlord. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees.

3. The remedy provided in subsection 2 is in addition to any right of the tenant arising under subsection 1.

4. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section 562A.12.

562A.22 Failure to deliver possession.

1. If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in section 562A.14, rent abates until possession is delivered and the tenant shall:

a. Upon at least five days' written notice to the landlord, terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or

b. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the damages sustained by the tenant.

2. If a landlord's failure to deliver possession is willful and not in good faith, a tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees.

562A.23 Wrongful failure to supply heat, water, hot water or essential services.

1. If contrary to the rental agreement or section 562A.15 the landlord deliberately or negligently fails to supply running water, hot water, or heat, or essential services, the tenant may give written notice to the landlord specifying the breach and may:

a. Procure reasonable amounts of hot water, running water, heat and essential services

during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

b. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

c. Recover any rent already paid for the period of the landlord's noncompliance which shall be reimbursed on a pro rata basis.

2. If the tenant proceeds under this section, the tenant may not proceed under section 562A.21 as to that breach.

3. The rights under this section do not arise until the tenant has given notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the consent of the tenant.

562A.25 Fire or casualty damage.

1. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

a. Immediately vacate the premises and notify the landlord in writing within fourteen days of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

b. If continued occupancy is lawful, vacate a part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

2. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable under section 562A.12. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty.

KENTUCKY

383.595 Landlord's maintenance obligations and agreements.

(1) A landlord shall:

(a) Comply with the requirements of applicable building and housing codes materially affecting health and safety;

(b) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) Keep all common areas of the premises in a clean and safe condition;

(d) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him; and

(e) Supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1 except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

(2) If the duty imposed by paragraph (a) of subsection (1) is greater than any duty imposed by any other paragraph of that subsection, the landlord's duty shall be determined by reference to paragraph (a) of subsection (1).

(3) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraph (e) of subsection (1) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) The landlord and tenant of any dwelling unit other than a single family residency may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) The work is not necessary to cure noncompliance with subsection (1)(a) of this section; and

(c) The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises. Effective: July 13, 1984 History: Repealed and reenacted 1984 Ky. Acts ch. 176, sec. 19, effective July 13, 1984. -- Created 1974 Ky. Acts ch. 378, sec. 20.

383.630 Landlord's failure to deliver possession.

(1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in KRS 383.590, rent abates until possession is delivered and the tenant may:

(a) Terminate the rental agreement upon at least five (5) days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and damage fee; or

(b) Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him.

(2) If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than three (3) months' periodic rent or threefold the actual damages sustained, whichever is greater, and reasonable attorney's fees. Effective: July 13, 1984 History: Repealed and reenacted 1984 Ky. Acts ch. 176, sec. 26, effective July 13, 1984. -- Created 1974 Ky. Acts ch. 378, sec. 27.

383.635 Remedies for noncompliance that affects health and safety.

(1) If the landlord willfully and materially fails to comply with the rental agreement or fails to comply with KRS 383.595 and such noncompliance materially affects health and safety and the reasonable cost of compliance is less than one hundred dollars ($100), or an amount equal to one-half (1/2) of the monthly rent, whichever amount is greater, the tenant may notify the landlord of his intention to correct the condition at the landlord's expense. If the landlord willfully fails to comply within fourteen (14) days after being notified by the tenant in writing or as promptly as conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement for the work actually done and for which the tenant has paid in full, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

(2) A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent. Effective: July 13, 1984 History: Repealed and reenacted 1984 Ky. Acts ch. 176, sec. 27, effective July 13, 1984. -- Created 1974 Ky. Acts ch. 378, sec. 28.

383.640 Wrongful failure to supply essential services.

(1) If, contrary to the rental agreement of KRS 383.595, the landlord willfully fails to supply heat, running water, hot water, electric, gas, or other essential service, the tenant may give written notice to the landlord specifying the breach and may:

(a) Procure reasonable amounts of heat, hot water, running water, electric, gas, and the essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) Recover damages based upon the diminution in the fair rental value of the dwelling

unit; or

(c) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) In addition to a remedy provided in paragraph (c) of subsection (1) the tenant may recover reasonable attorney's fees.

(3) If the tenant proceeds under this section, he may not proceed under KRS 383.625 or 383.635 as to that breach.

(4) Rights of the tenant under this section do not arise until he has given notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent. Effective: July 13, 1984 History: Repealed and reenacted 1984 Ky. Acts ch. 176, sec. 28, effective July 13, 1984. -- Created 1974 Ky. Acts ch. 378, sec. 29.

MAINE

§6021. Implied warranty and covenant of habitability

1. Definition. As used in this section, the term "dwelling unit" shall include mobile homes, apartments, buildings or other structures, including the common areas thereof, which are rented for human habitation.

2. Implied warranty of fitness for human habitation. In any written or oral agreement for rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling unit is fit for human habitation.

3. Complaints. If a condition exists in a dwelling unit which renders the dwelling unit unfit for human habitation, then a tenant may file a complaint against the landlord in the District Court or Superior Court. The complaint shall state that:

A. A condition, which shall be described, endangers or materially impairs the health or safety of the tenants;

B. The condition was not caused by the tenant or another person acting under his control;

C. Written notice of the condition without unreasonable delay, was given to the landlord or to the person who customarily collects rent on behalf of the landlord;

D. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and

E. The tenant was current in rental payments owing to the landlord at the time written notice was given.

The notice requirement of paragraph C may be satisfied by actual notice to the person who customarily collects rents on behalf of the landlord.

4. Remedies. If the court finds that the allegations in the complaint are true, the landlord shall be deemed to have breached the warranty of fitness for human habitation established by this section, as of the date when actual notice of the condition was given to the landlord. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.

A. The court may issue appropriate injunctions ordering the landlord to repair all conditions which endanger or materially impair the health or safety of the tenant;

B. The court may determine the fair value of the use and occupancy of the dwelling unit by the tenant from the date when the landlord received actual notice of the condition until such time as the condition is repaired, and further declare what, if any, moneys the tenant owes the landlord or what, if any, rebate the landlord owes the tenant for rent paid in

excess of the value of use and occupancy. In making this determination, there shall be a rebuttable presumption that the rental amount equals the fair value of the dwelling unit free from any condition rendering it unfit for human habitation. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

C. The court may authorize the tenant to temporarily vacate the dwelling unit if the unit must be vacant during necessary repairs. No use and occupation charge shall be incurred by a tenant until such time as the tenant resumes occupation of the dwelling unit. If the landlord offers reasonable, alternative housing accommodations, the court may not surcharge the landlord for alternate tenant housing during the period of necessary repairs.

D. The court may enter such other orders as the court may deem necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.

Upon the filing of a complaint under this section, the court shall enter such temporary restraining orders as may be necessary to protect the health or well-being of tenants or of the public.

5. Waiver. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section shall be void.

6. Heating requirements. It is a breach of the implied warranty of fitness for human habitation when the landlord is obligated by agreement or lease to provide heat for a dwelling unit and:

A. The landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;

B. The dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; or

C. The heating facilities are not operated so as to protect the building equipment and systems from freezing.

Municipalities of this State are empowered to adopt or retain more stringent standards

by ordinances, laws or regulations provided in this section. Any less restrictive municipal ordinance, law or regulation establishing standards are invalid and of no force and suspended by this section.

§6025. Access to premises

1. Tenant obligations. A tenant may not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

A tenant may not change the lock to the dwelling unit without giving notice to the landlord and giving the landlord a duplicate key within 48 hours of the change.

2. Landlord obligations. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his intent to enter and shall enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

3. Remedy. If a landlord makes an entry in violation of this section, makes a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages or $100, whichever is greater, and obtain injunctive relief to prevent recurrence of the conduct, and if the tenant obtains a judgment after a contested hearing, reasonable attorney's fees.

If a tenant changes the lock and does not provide the landlord with a duplicate key, in the case of emergency the landlord may gain admission through whatever reasonable means necessary and charge the tenant reasonable costs for any resulting damage. If a tenant changes the lock and refuses to provide the landlord with a duplicate key, the landlord may terminate the tenancy with a 7-day notice.

4. Waiver. Any agreement by a tenant to waive any of the rights or benefits provided by this section is against public policy and is void.

MASSACHUSETTS

Chapter 186: Section 14. Wrongful acts of landlord; premises used for dwelling or residential purposes; utilities, services, quiet enjoyment; penalties; remedies; waiver

Section 14. Any lessor or landlord of any building or part thereof occupied for dwelling purposes, other than a room or rooms in a hotel, but including a manufactured home or land therefor, who is required by law or by the express or implied terms of any contract or lease or tenancy at will to furnish water, hot water, heat, light, power, gas, elevator service, telephone service, janitor service or refrigeration service to any occupant of such building or part thereof, who willfully or intentionally fails to furnish such water, hot water, heat, light, power, gas, elevator service, telephone service, janitor service or refrigeration service at any time when the same is necessary to the proper or customary use of such building or part thereof, or any lessor or landlord who directly or indirectly interferes with the furnishing by another of such utilities or services, or who transfers the responsibility for payment for any utility services to the occupant without his knowledge or consent, or any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant, or who attempts to regain possession of such premises by force without benefit of judicial process, shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment for not more than six months. Any person who commits any act in violation of this section shall also be liable for actual and consequential damages or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee, all of which may be applied in setoff to or in recoupment against any claim for rent owed or owing. The superior and district courts shall have jurisdiction in equity to restrain violations of this section. The provisions of section eighteen of chapter one hundred and eighty-six and section two A of chapter two hundred and thirty-nine shall apply to any act taken as a reprisal against any person for reporting or proceeding against violations of this section. Any waiver of this provision in any lease or other rental agreement, except with respect to any restriction on the provision of a service specified in this section imposed by the United States or any agency thereof or the commonwealth or any agency or political subdivision thereof and not resulting from the acts or omissions of the landlord or lessor, and except for interruptions of any specified service during the time required to perform necessary repairs to apparatus necessary for the delivery of said service or interruptions resulting from natural causes beyond the control of the lessor or landlord, shall be void and unenforceable.

Chapter 186: Section 15D. Oral agreement to execute lease; delivery of lease copy; penalty; waiver

Section 15D. A lessor who has agreed orally to execute a lease and obtains the signature of the lessee shall, within thirty days thereafter, deliver a copy of said lease to the lessee, duly signed and executed by said lessor. Whoever violates any provision of this section shall be punished by a fine of not more than three hundred dollars. Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable.

MICHIGAN

Michigan's Act seems to deal completely with security deposits.

MINNESOTA

504B.131 Rent liability; uninhabitable buildings.

A tenant or occupant of a building that is destroyed or becomes uninhabitable or unfit for occupancy through no fault or neglect of the tenant or occupant may vacate and surrender such a building. A tenant or occupant may expressly agree otherwise except as prohibited by section 504B.161.

504B.211 Residential tenant's right to privacy.

Subdivision 1. Definitions. For purposes of this section, "landlord" has the meaning defined in section504B.001, subdivision 7, and also includes the landlord's agent or other person acting under the landlord's direction and control.

Subd. 2. Entry by landlord. Except as provided in subdivision 5, a landlord may enter the premises rented by a residential tenant only for a reasonable business purpose and after making a good faith effort to give the residential tenant reasonable notice under the circumstances of the intent to enter. A residential tenant may not waive and the landlord may not require the residential tenant to waive the residential tenant's right to prior notice of entry under this section as a condition of entering into or maintaining the lease.

Subd. 3. Reasonable purpose. For purposes of subdivision 2, a reasonable business purpose includes, but is not limited to:

(1) showing the unit to prospective residential tenants during the notice period before the lease terminates or after the current residential tenant has given notice to move to the landlord or the landlord's agent;

(2) showing the unit to a prospective buyer or to an insurance representative;

(3) performing maintenance work;

(4) allowing inspections by state, county, or city officials charged in the enforcement of health, housing, building, fire prevention, or housing maintenance codes;

(5) the residential tenant is causing a disturbance within the unit;

(6) the landlord has a reasonable belief that the residential tenant is violating the lease within the residential tenant's unit;

(7) prearranged housekeeping work in senior housing where 80 percent or more of the residential tenants are age 55 or older;

(8) the landlord has a reasonable belief that the unit is being occupied by an individual without a legal right to occupy it; or

(9) the residential tenant has vacated the unit.

Subd. 4. Exception to notice requirement.

Notwithstanding subdivision 2, a landlord may enter the premises rented by a residential tenant to inspect or take appropriate action without prior notice to the residential tenant if the landlord reasonably suspects that:

(1) immediate entry is necessary to prevent injury to persons or property because of conditions relating to maintenance, building security, or law enforcement;

(2) immediate entry is necessary to determine a residential tenant's safety; or

(3) immediate entry is necessary in order to comply with local ordinances regarding unlawful activity occurring within the residential tenant's premises.

Subd. 5. Entry without residential tenant's presence. If the landlord enters when the residential tenant is not present and prior notice has not been given, the landlord shall disclose the entry by placing a written disclosure of the entry in a conspicuous place in the premises.

Subd. 6. Penalty. If a landlord substantially violates subdivision 2, the residential tenant is entitled to a penalty which may include a rent reduction up to full rescission of the lease, recovery of any damage deposit less any amount retained under section 504B.178, and up to a $100 civil penalty for each violation. If a landlord violates subdivision 5, the residential tenant is entitled to up to a $100 civil penalty for each violation. A residential tenant shall follow the procedures in sections504B.381,504B.385, and 504B.395 to 504B.471 to enforce the provisions of this section.

Subd. 7. Exemption. This section does not apply to residential tenants and landlords of manufactured home parks as defined in section 321C.01.

MISSISSIPPI

Sec. 89-8-13. Right to terminate tenancy; notice

(1) If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(3) The nonbreaching party may deliver a written notice to the party in breach specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of thirty (30) days; and the rental agreement shall terminate and the tenant shall surrender possession as provided in the notice subject to the following:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise, and the breaching party adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate;

(b) In the absence of a showing of due care by the breaching party, if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the nonbreaching party may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement;

(c) Neither party may terminate for a condition caused by his own deliberate or negligent act or omission or that of a member of his family or other person on the premises with his consent.

(4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.

(5) Notwithstanding the provisions of this section or any other provisions of this chapter to the contrary, if the material noncompliance by the tenant is the nonpayment of rent pursuant to the rental agreement, the landlord shall not be required to deliver thirty (30) days' written notice as provided by subsection (3) of this section. In such event, the landlord may seek removal of the tenant from the premises in the manner and with the notice prescribed by Chapter 7, Title 89, Mississippi Code of 1972.

Sec. 89-8-15. Repair of defects

(1) If, within thirty (30) days after written notice to the landlord of a specific and material defect which constitutes a breach of the terms of the rental agreement or of the obligation of the landlord under Section 89-8-23, the landlord fails to repair such defect, the tenant:

(a) May repair such defect himself; and

(b) Except as otherwise provided in subsection (2) of this section, shall be entitled to reimbursement of the expenses of such repairs within forty-five (45) days after submission to the landlord of receipted bills for such work, provided that:

(i) The tenant has fulfilled his affirmative obligations under Section 89-8-25;

(ii) The expenses incurred in making such repairs do not exceed an amount equal to one (1) month's rent;

(iii) The tenant has not exercised the remedy provided by this section in the six (6) months immediately preceding; and

(iv) The tenant is current in his rental payment.

(2) A tenant shall not be entitled to be reimbursed for repairs made pursuant to this section in an amount greater than the usual and customary charge for such repairs.

(3) Before correcting a condition affecting facilities shared by more than one (1) dwelling unit, the tenant shall notify all other tenants sharing such facilities of his plans and shall so arrange the work as to create the least practicable inconvenience to the other tenants.

(4) The cost of repairs made by a tenant pursuant to this section may be offset against future rent.

(5) No provision of this section shall be construed to grant a lien against the real property.

Sec. 89-8-23. Obligations of landlord

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

(a) Comply with the requirements of applicable building and housing codes materially affecting health and safety;

(b) Maintain the dwelling unit, its plumbing, heating and/or cooling system, in substantially the same condition as at the inception of the lease, reasonable wear and tear excluded, unless the dwelling unit, its plumbing, heating and/or cooling system is damaged or impaired as a result of the deliberate or negligent actions of the tenant.

(2) No duty on the part of the landlord shall arise under this section in connection with a defect which is caused by the deliberate or negligent act of the tenant or persons on the premises with the tenant's permission.

(3) Subject to the provisions of Section 89-8-5, the landlord and tenant may agree in writing that the tenant perform some or all of the landlord's duties under this section, but only if the transaction is entered into in good faith.

(4) No duty on the part of the landlord shall arise under this section in connection with a defect which is caused by the tenant's affirmative act or failure to comply with his obligations under Section 89-8-25.

MISSOURI

Tenant may deduct cost of repair of rental premises from rent, when --limitations.
441.234. 1. The provisions of this section shall apply only to a tenant who has lawfully resided on the rental premises for six consecutive months, has paid all rent and charges due the landlord during that time, and did not during that time receive any written notice from the landlord of any violation of any lease provision or house rule, which violation was not subsequently cured.
2. If there exists a condition on residential premises which detrimentally affects the habitability, sanitation or security of the premises, and the condition constitutes a violation of a local municipal housing or building code, and the reasonable cost to correct the condition is less than three hundred dollars, or one-half of the periodic rent, whichever is greater, provided that the cost may not exceed one month's rent, the tenant may notify the landlord of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to correct the condition within fourteen days after being notified by the tenant in writing or as promptly as required in case of an emergency, the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, including receipts, deduct from the rent the actual and reasonable cost of the work, as documented by the receipts, not exceeding the amount specified in this subsection; provided, however, if the landlord provides to the tenant within said notice period a written statement disputing the necessity of the repair, then the tenant may not deduct the cost of the repair from the rent without securing, before the repair is performed, a written certification from the local municipality or government entity that the condition requiring repair constitutes a violation of local municipal housing or building code. In the event of such certification, the tenant may cause the work to be done as described herein if the landlord fails to correct the condition within fourteen days after the date of said certification or the date of the notice from the tenant, whichever is later, or as promptly as required in case of an emergency. The tenant's remedy provided herein is not exclusive of any other remedies which may be available to the tenant under the law. No lease agreement shall contain a waiver of the rights described in this section.
3. A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with tenant's consent. A tenant may not deduct in the aggregate more than the amount of one month's rent during any twelve-month period.

MONTANA

70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector.

(1) A landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under the landlord's control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection (1)(h).

70-24-312. Access to premises by landlord.

(1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-4425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord

to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter.

70-24-405. Failure of landlord to deliver possession -- tenant's remedies.

(1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by him.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

70-24-406. Failure of landlord to maintain premises -- tenant's remedies.

(1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by the tenant, a member of the tenant's family, or other persons on the premises with the tenant's consent.

(b) make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to

make the repairs.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

70-24-408. Purposeful or negligent failure to provide essential services -- tenant's remedies.

(1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

70-24-410. Unlawful or unreasonable entry by landlord -- tenant's remedies.

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

NEBRASKA

76-1419
Landlord to maintain fit premises.

(1) The landlord shall:

(a) Substantially comply, after written or actual notice, with the requirements of the applicable minimum housing codes materially affecting health and safety;

(b) Make all repairs and do whatever is necessary, after written or actual notice, to put and keep the premises in a fit and habitable condition;

(c) Keep all common areas of the premises in a clean and safe condition;

(d) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him or her;

(e) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and

(f) Supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

If there exists a minimum housing code applicable to the premises, the landlord's maximum duty under this section shall be determined by subdivision (1)(a) of this section. The obligations imposed by this section are not intended to change existing tort law in the state.

(2) The landlord and tenant of a single-family residence may agree that the tenant perform the landlord's duties specified in subdivisions (1)(e) and (1)(f) of this section and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is in writing, for good consideration, entered into in good faith and not for the purpose of evading the obligations of the landlord.

(3) The landlord and tenant of a dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the

parties and supported by adequate consideration; and

(b) The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(4) Notwithstanding any provision of the Uniform Residential Landlord and Tenant Act, a landlord may employ a tenant to perform the obligations of the landlord.

76-1423

Access.

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least one day's notice of his intent to enter and enter only at reasonable times.

(4) The landlord has no other right of access except by court order, and as permitted by subsection (2) of section 76-1432, or if the tenant has abandoned or surrendered the premises.

76-1425

Noncompliance by landlord.

(1) Except as provided in the Uniform Residential Landlord and Tenant Act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 76-1419 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental

agreement. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his or her family, or other person on the premises with his or her consent.

(2) Except as provided in the Uniform Residential Landlord and Tenant Act, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 76-1419. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees. If the landlord's noncompliance is caused by conditions or circumstances beyond his or her control, the tenant may not recover consequential damages, but retains remedies provided in section 76-1427.

(3) The remedy provided in subsection (2) of this section is in addition to any right of the tenant arising under subsection (1) of this section.

(4) If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section 76-1416.

76-1427

Wrongful failure to supply heat, water, hot water, or essential services.

(1) If contrary to the rental agreement or section 76-1419 the landlord deliberately or negligently fails to supply running water, hot water, or heat, or essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) Procure reasonable amounts of hot water, running water, heat and essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

In addition to the remedy provided in subdivisions (a) and (c), if the failure to supply is deliberate, the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under this subsection reasonable attorney's fees.

(2) If the tenant proceeds under this section, he may not proceed under section 76-1425 as to that breach.

(3) The rights under this section do not arise until the tenant has given written notice to the landlord or if the

condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent. This section is not intended to cover circumstances beyond the landlord's control.

NEW MEXICO

47-8-20. Obligations of owner._

A. The owner shall: _(1) substantially comply with requirements of the applicable minimum housing codes materially_affecting health and safety; _(2) make repairs and do whatever is necessary to put and keep the premises in a safe condition as_provided by applicable law and rules and regulations as provided in Section 47-8-23 NMSA 1978; _(3) keep common areas of the premises in a safe condition; _(4) maintain in good and safe working order and condition electrical, plumbing, sanitary, heating,_ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied_or required to be supplied by him; _(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes,_garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for_their removal from the appropriate receptacle; and _(6) supply running water and a reasonable amount of hot water at all times and reasonable heat_except where the building that includes the dwelling unit is not required by law to be equipped for_that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an_installation within the exclusive control of the resident and supplied by a direct public utility_connection. _

B. If there exists a minimum housing code applicable to the premises, the owner's maximum duty_under this section shall be determined by Paragraph (1) of Subsection A of this section. The_obligations imposed by this section are not intended to change existing tort law in the state. _

C. The owner and resident of a single family residence may agree that the resident perform the_owner's duties specified in Paragraphs (5) and (6) of Subsection A of this section and also_specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is in_writing, for consideration, entered into in good faith and not for the purpose of evading the_obligations of the owner. _

D. The owner and resident of a dwelling unit other than a single family residence may agree that_the resident is to perform specified repairs, maintenance tasks, alterations or remodeling only if: _(1) the agreement of the parties is entered into in good faith and not for the purpose of evading_the obligations of the owner and is set forth in a separate writing signed by the parties and_supported by consideration; and _(2) the agreement does not diminish or affect the obligation of the owner to other residents in the_premises. _

E. Notwithstanding any provision of this section, an owner may arrange with a resident to_perform the obligations of the owner. Any such arrangement between the owner and the resident_will not serve to diminish the owner's obligations as set forth in this section, nor shall the failure of_the resident to perform the obligations of the owner serve as a basis for eviction or in any way be_considered a material breach by the resident of his obligations under the Uniform Owner-Resident_Relations Act [47-8-1 to 47-8-51 NMSA 1978] or the rental agreement. _

F. In multi-unit housing, if there is separate utility metering for each unit, the resident shall receive_a copy of the utility bill for his unit upon request made to the owner or his agent. If the unit is_submetered, the resident shall then be entitled to receive a copy of the apartment's utility bill._When utility bills for common areas are separately apportioned between units and the costs are_passed on to the residents of each unit, each resident may, upon request, receive a copy of all_utility bills being apportioned. The calculations used as the basis for apportioning the cost of_utilities for common areas and submetered apartments shall be made available to any resident_upon request. The portion of the common area cost that would be allocated to an empty unit if it_were occupied shall not be allocated to the remaining residents. It is solely the owner's_responsibility to supply the items and information in this subsection to the tenant upon request._The owner may charge an administrative fee not to exceed two dollars ($2.00) for each monthly_request of the items in this subsection. _G. The owner shall provide a written rental agreement to each tenant prior to the beginning of_occupancy. _

47-8-24. Right of entry._

A. The resident shall, in accordance with provisions of the rental agreement and notice provisions_as provided in this section, consent to the owner to enter into the dwelling unit in order to inspect_the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply_necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers,_mortgagees, prospective residents, workmen or contractors; provided that: _(1) unless otherwise agreed upon by the owner and resident, the owner may enter the resident's_dwelling unit pursuant to this subsection only after giving the resident twenty-four hours written_notification of his intent to enter, the purpose for entry and the date and reasonable estimate of the_time frame of the entry; _(2) this subsection is not applicable to entry by the owner to perform repairs or services within_seven days of a request by the resident or when the owner is accompanied by a public official_conducting an inspection or a cable television, electric, gas or telephone company representative;_and _(3) where the resident gives reasonable prior notice and alternate times or dates for entry and it is_practicable or will not result in economic detriment to the owner, then the owner shall attempt to_reasonably accommodate the alternate time of entry. _

B. The owner may enter the dwelling unit without consent of the resident in case of an_emergency. _

C. The owner shall not abuse the right of access. _

D. The owner has no other right of access except by court order, as permitted by this section if_the resident has abandoned or surrendered the premises or if the resident has been absent from the_premises more than seven days, as permitted in Section 47-8-34 NMSA 1978. _

E. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel_access or terminate the rental agreement. In either case, the owner may recover damages. _

F. If the owner makes an unlawful entry, or a lawful entry in an unreasonable manner, or makes_repeated demands for entry that are otherwise lawful but that have the effect of unreasonably_interfering with the resident's quiet enjoyment of the dwelling unit, the resident may obtain_injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In_either case, the resident may recover damages. _

47-8-28. Failure to deliver possession.

A. At the time specified in the rental agreement for the commencement of occupancy, the owner_shall deliver possession of the premises to the resident in_compliance with the rental agreement and Section 47-8-20 NMSA 1978. _

B. If the owner fails to deliver possession of the dwelling unit to the prospective resident as_provided in Subsection A of this section, one hundred percent of the rent abates until possession_is delivered and the prospective resident may: _(1) upon written notice to the owner, terminate the rental agreement effective immediately. Upon_termination the owner shall return all prepaid rent and deposits; or _(2) demand performance of the rental agreement by the owner and, if the prospective resident_elects, maintain an action for possession of the dwelling unit against any person wrongfully in_possession or wrongfully withholding possession and recover the damages sustained by him and_seek the remedies provided in Section 47-8-48 NMSA 1978. _

C. If the owner makes reasonable efforts to obtain possession of the premises and returns prepaid_rents, deposits and fees within seven days of receiving a resident's notice of termination, the_owner shall not be liable for damages under this section.

47-8-31. Resident rights following fire or casualty.

A. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that_enjoyment of the dwelling unit is substantially impaired, the resident may: _(1) vacate the premises and notify the owner in writing within seven days thereafter of his_intention to terminate the rental agreement, in which case the rental agreement terminates as of_the date of vacating; or _(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the_fire or casualty, in which case the resident's liability for rent is reduced in proportion to the_diminution in the fair rental value of the dwelling unit. _

B. If the rental agreement is terminated, the owner shall return the balance, if any, [of] prepaid_rent and deposits recoverable under Section 18 [47-8-18 NMSA 1978] of the Uniform_Owner-Resident Relations Act. Accounting for rent, in the event of termination or apportionment,_is to occur as of the date of the vacation. Notwithstanding the provisions of this section, the_resident is responsible for damage caused by his negligence. _

47-8-36. Unlawful removal and diminution of services prohibited.

A. Except in case of abandonment, surrender or as otherwise permitted in the Uniform_Owner-Resident Relations Act [47-8-1 to 47-8-51 NMSA 1978], an owner or

any person acting_on behalf of the owner shall not knowingly exclude the resident, remove, threaten or attempt to_remove or dispossess a resident from the dwelling unit without a court order by: _(1) fraud; _(2) plugging, changing, adding or removing any lock or latching device; _(3) blocking any entrance into the dwelling unit; _(4) interfering with services or normal and necessary utilities to the unit pursuant to Section_47-8-32 NMSA 1978, including but not limited to electricity, gas, hot or cold water, plumbing,_heat or telephone service, provided that this section shall not impose a duty upon the owner to_make utility payments or otherwise prevent utility interruptions resulting from nonpayment of_utility charges by the resident; _(5) removing the resident's personal property from the dwelling unit or its premises; _(6) removing or incapacitating appliances or fixtures, except for making necessary and legitimate_repairs; or _(7) any willful act rendering a dwelling unit or any personal property located in the dwelling unit_or on the premises inaccessible or uninhabitable. _

B. The provisions of Subsection A of this section shall not apply if an owner temporarily_interferes with possession while making legitimate repairs or inspections as provided for in the_Uniform Owner-Resident Relations Act. _

C. If an owner commits any of the acts stated in Subsection A of this section, the resident may: _(1) abate one hundred percent of the rent for each day in which the resident is denied possession_of the premises for any portion of the day or each day where the owner caused termination or_diminishment of any service for any portion of the day; _(2) be entitled to civil penalties as provided in Subsection B of Section 47-8-48 NMSA 1978; _(3) seek restitution of the premises pursuant to Sections 47-8-41 and Section 47-8-42 NMSA_1978 or terminate the rental agreement; and _(4) be entitled to damages.

NORTH CAROLINA

Section 42-12. Lessee may surrender, where building destroyed or damaged.

If a demised house, or other building, is destroyed during the term, or so much damaged that it cannot be made reasonably fit for the purpose for which it was hired, except at an expense exceeding one year's rent of the premises, and the damage or destruction occur without negligence on the part of the lessee or his agents or servants, and there is no agreement in the lease respecting repairs, or providing for such a case, and the use of the house damaged or destroyed was the main inducement to the hiring, the lessee may surrender his estate in the demised premises by a writing to that effect delivered or tendered to the landlord within 10 days from the damage or destruction, and by paying or tendering at the same time all rent in arrear, and a part of the rent growing due at the time of the damage or destruction, proportionate to the time between the last period of payment and the occurrence of the damage or destruction, and the lessee shall be thenceforth discharged from all rent accruing afterwards; but not from any other agreement in the lease. This section shall not apply if a contrary intention appear from the lease. (1868-9, c. 156, s. 12; Code, s. 1753; Rev., s. 1992; C.S., s. 2352.)

Section 42-42. Landlord to provide fit premises.

(a) The landlord shall:

(1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes; no new requirement is imposed by this subdivision (a)(1) if a structure is exempt from a current building code.

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.

(3) Keep all common areas of the premises in safe condition.

(4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord provided that notification of needed repairs is made to the landlord in writing by the tenant, except in emergency situations.

(5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and install the smoke detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord shall replace or repair the smoke detectors within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-

operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

(6) If the landlord is charging for the cost of providing water or sewer service pursuant to G.S. 42-42.1 and has actual knowledge from either the supplying water system or other reliable source that water being supplied to tenants within the landlord's property exceeds a maximum contaminant level established pursuant to Article 10 of Chapter 130A of the General Statutes, provide notice that water being supplied exceeds a maximum contaminant level.

(b) The landlord is not released of his obligations under any part of this section by the tenant's explicit or implicit acceptance of the landlord's failure to provide premises complying with this section, whether done before the lease was made, when it was made, or after it was made, unless a governmental subdivision imposes an impediment to repair for a specific period of time not to exceed six months. Notwithstanding the provisions of this subsection, the landlord and tenant are not prohibited from making a subsequent written contract wherein the tenant agrees to perform specified work on the premises, provided that said contract is supported by adequate consideration other than the letting of the premises and is not made with the purpose or effect of evading the landlord's obligations under this Article. (1977, c. 770, s. 1; 1995, c. 111, s. 2; 1998-212, s. 17.16(i); 2004-143, s. 3.)

NORTH DAKOTA

47-16-07.3. When landlord may enter apartment.

A landlord may enter the dwelling unit:

1. At any time in case of emergency or if the landlord reasonably believes the tenant has abandoned the premises, or the landlord reasonably believes the tenant is in substantial violation of the provisions of the lease or rental agreement.

2. Only during reasonable hours, and in a reasonable manner, for the purpose of inspecting the premises; for making necessary or agreed repairs, decorations, alterations, or improvements; for supplying necessary or agreed services; or for exhibiting the residential dwelling unit to actual or potential purchasers, insurers, mortgagees, real estate agents, tenants, workmen, or contractors. Unless it is impractical to do so the landlord shall first notify and receive the consent of the tenant which shall not be unreasonably withheld, which consent shall identify a time certain. A landlord shall not abuse the right of access or use it to harass or intimidate the tenant.

For the purposes of this section, consent shall be presumed from failure to object to access after notice of intent to enter at a time certain has been given. Notice may be given by personal service, by posting the notice in a conspicuous place in or about the dwelling unit for a reasonable period of time, or by any other method which results in actual notice to the tenant.

47-16-13. When lessee may repair or vacate premises.

If within a reasonable time after notice from the lessee of dilapidations which the lessor ought to repair the lessor neglects to do so, the lessee may:

1. Repair the premises and deduct the expense of such repair from the rent;

2. Recover it in any other lawful manner from the lessor; or

3. Vacate the premises, in which case the lessee shall be discharged from further payment of rent or performance of other conditions.

47-16-13.1. Landlord obligations - Maintenance of premises.

1. A landlord of a residential dwelling unit shall: a. Comply with the requirements of applicable building and housing codes materially affecting health and safety. b. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. c. Keep all common areas of the premises in a clean and safe condition. d. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord. e. Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal. f. Supply running water and reasonable amounts of hot water at all times and reasonable heat, except if the building that includes the dwelling unit is not required by

law to be equipped for that purpose or if the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection or if the water or heat is unavailable due to supply failure by a public utility.

2. In case of noncompliance with the requirements of subdivisions b through f of subsection 1, a reasonable time shall be allowed to remedy such noncompliance.

3. If the duty imposed by subdivision a of subsection 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision a of subsection 1.

4. The landlord and tenant of a single-family residence may agree in writing that the tenant perform the landlord's duties specified in subdivisions e and f of subsection 1 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

5. The landlord and tenant of any dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if: a. The agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration. b. The work is not necessary to cure noncompliance with subdivision e of subsection 1. c. The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

6. The landlord may not treat performance of the separate agreement described in subsection 4 as a condition to any obligation or performance of any rental agreement.

47-16-17. When lessee may terminate lease.

The lessee of real property may terminate the lease before the end of the term agreed upon:

1. When the lessor does not fulfill the lessor's obligations, if any, within a reasonable time after request, as to placing and securing the lessee in the quiet possession of the property leased, or putting it into a good condition, or repairing it; or

2. When the greater part of the property leased, or that part which was, and which the lessor had reason to believe was, the material inducement to the lessee to enter into the contract, perishes from any cause other than the ordinary negligence of the lessee.

OKLAHOMA

SECTION 118. **Duties of landlord and tenant**

A landlord shall at all times during the tenancy:

.Except in the case of a single-family residence, keep all common areas of his building, grounds, facilities and appurtenances in a dean, safe and sanitary condition;

.Make all repairs and do whatever is necessary to put and keep the tenant's dwelling unit and premises in a fit and habitable condition,

.Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;

.Except in the case of one-or two-family residences or where provided by a governmental entity, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for the frequent removal of such wastes; and

.Except in the case of a single-family residence or where the service is supplied by direct and independently-metered utility connections to the dwelling unit, supply running water and reasonable amounts of hot water at all times and reasonable he-at.

The landlord and tenant of a dwelling unit may agree by a conspicuous writing independent of the rental agreement that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling.

SECTION 120. **Failure of landlord to deliver possession of dwelling unit to tenant**

.If the landlord fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may terminate the rental agreement by giving a written notice of such termination to the landlord, whereupon the landlord shall return all prepaid rent and deposit, or the tenant may, at his option, demand performance of the rental agreement by the landlord and maintain an action for pos, session of the dwelling unit against any person wrongfully in possession and recover the actual damages sustained by him.

If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than twice the monthly rental as specified in the rental agreement, computed and prorated on a daily basis, for each month, or portion thereof, that said person wrongfully remains in possession.

.SECTION 121. **Landlord's breach of rental agreement-Deductions from rent for repairs - Failure to supply heat, water or other essential services-Habitability of dwelling unit**

.Except as otherwise provided in this act, if there is a material noncompliance by the landlord with the terms of the rental agreement or a noncompliance with any of the provisions of Section 118 of this act which noncompliance materially affects health or safety, the tenant may deliver to the landlord a written notice specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within fourteen (14) days, and thereafter the rental agreement shall so terminate as

provided in the notice unless the landlord adequately remedies the breach within the time specified.

.Except as otherwise provided in this act, if there is a material noncompliance by the landlord with any of the terms of the rental agreement or any of the provisions of Section 118 of this act which noncompliance materially affects health and the breach is remediable by repairs, the reasonable cost of which is less than One Hundred Dollars ($100.00), the tenant may notify the landlord in writing of his intention to correct the condition at the landlord's expense after the expiration of fourteen (14) days. If the landlord fails to comply within said fourteen (14) days, or as promptly as conditions require in the case of an emergency, the tenant may thereafter cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection, in which event the rental agreement shall not terminate by reason of that breach.

.Except as otherwise provided in this act, if, contrary to the rental agreement or Section 118 of this act, the landlord willfully or negligently fails to supply heat, running water, hot water, electric, gas or other essential service, the tenant may give written notice to the landlord specifying the breach and thereafter may:

.Upon written notice, immediately terminate the rental agreement; or

.Procure reasonable amounts of heat, hot water, running water, electric, gas or other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or

.Recover damages based on the diminution of the fair rental value of the dwelling unit; or

Upon written notice, procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

.D. Except as otherwise provided in this act, if there is a noncompliance by the landlord with the terms of the rental agreement or Section 118 of this act, which noncompliance renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of any occupant of the dwelling unit and which noncompliance is not remedied as promptly as conditions require, the tenant may immediately terminate the rental agreement upon written notice to the landlord which notice specifies the noncompliance. All rights of the tenant under this section do not arise until he has given written notice to the landlord or if the condition complained of was caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with his consent.

.SECTION 122. **Damage to or destruction of dwelling unit-Rights and duties of tenant**

.If the dwelling unit or premises are damaged or destroyed by fire or other casualty to an extent that enjoyment of the dwelling unit is substantially impaired, unless the impairment is caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with his consent, the tenant may:

.Immediately vacate the premises and notify the landlord in writing within one (1) week thereafter of his intention to terminate the rental agreement, in which case

the rental,agreement terminates as of the date of vacating; or

.If continued occupancy is possible, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

If the rental agreement is terminated under this section the landlord shall return all deposits recoverable under Section 115 of this act and all prepaid and unearned rent. Accounting for rent in the event of termination or apportionments shall be made as of the date of the fire or other casualty.

SECTION 124. **Unlawful entry or lawful entry in unreasonable manner--- Harrassment of tenant -Damages**

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or harasses the tenant by making repeated unreasonable demands for entry, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or, upon written notice, terminate the rental agreement. In either case the tenant may recover actual damages.

SECTION 128. **Consent of tenant for landlord to enter dwelling unit-Emergency entry - Abuse of right of entry - Notice - Abandoned premises - Refusal of consent**

tenant shall not unreasonably withhold consent to the landlord, his agents and employees, to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagee, tenants, workmen or contractors.

.A landlord, his agents and employees may enter the dwelling unit without consent of the tenant in case of emergency.

.A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least one (1) day's notice of his intent to enter and may enter only at reasonable times.

.Unless the tenant has abandoned or surrendered the premises, a landlord has no other right of access during a tenancy except as is provided in this act or pursuant to a court order.

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or he may terminate the rental agreement.

OREGON

90.320. Landlord to maintain premises in habitable condition; agreement with tenant to maintain premises.

(1) A landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. For purposes of this section, a dwelling unit shall be considered uninhabitable if it substantially lacks:

(a) Effective waterproofing and weather protection of roof and exterior walls, including windows and doors.

(b) Plumbing facilities which conform to applicable law in effect at the time of installation, and maintained in good working order;

(c) A water supply approved under applicable law, which is:

(A) Under the control of the tenant or landlord and is capable of producing hot and cold running water;

(B) Furnished to appropriate fixtures;

(C) Connected to a sewage disposal system approved under applicable law; and

(D) Maintained so as to provide safe drinking water and to be in good working order to the extent that the system can be controlled by the landlord;

(d) Adequate heating facilities which conform to applicable law at the time of installation and maintained in good working order;

(e) Electrical lighting with wiring and electrical equipment which conform to applicable law at the time of installation and maintained in good working order;

(f) Building, grounds and appurtenances at the time of the commencement of the rental agreement in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

(g)

(A) In a city with a population of fewer than 250,000 people, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the rental agreement, and the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal unless the parties by written agreement provide otherwise; or

(B) In a city with a population of more than 250,000 people, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the rental agreement, and thereafter the landlord shall be responsible for providing appropriate receptacles, and where individual container service is provided for the service and removal at least once a week of containers, including recycling containers, that allow for 30 cumulative gallons of accumulation a week,

. (h) Floors, walls, ceilings, stairways and railings maintained in goodrepair;

. (i) Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord;

. (j) Safety from the hazards of fire, including a working smoke detector, with working batteries provided only at the beginning of any new tenancy when the tenant first takes possession of the premises, as provided in ORS 479.270. but not to include the tenant's testing of the smoke detector as provided in ORS 90.325(6); or

. (k) Working locks for all dwelling entrance doors, and, unless contrary to applicable law, latches for all windows, by which access may be had to that portion of the premises which the tenant is entitled under the rental agreement to occupy to the exclusion of others and keys for such locks which require keys.

. (2) The landlord and tenant may agree in writing that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;

(b) The agreement does not diminish the obligations of the landlord to other tenants in the premises; and

(c) The terms and conditions of the agreement are clearly and fairly disclosed and adequate consideration for the agreement is specifically stated.

(3)Any provisions of this section that reasonably apply only to a structure that is used as a home, residence or sleeping place shall not apply to a manufactured dwelling, recreational vehicle, residential vehicle or floating home where the tenant owns the manufactured dwelling, recreational vehicle, residential vehicle or floating home but rents the space.

90.322. Landlord's access to premises; manner of entry; landlord immunity; injunctive relief.

(1) A landlord may enter into the tenant's dwelling unit or any portion of the premises under the tenant's exclusive control in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors. The landlord's right of access is limited as follows:

(a) A landlord may enter upon the premises under the tenant's exclusive control not including the dwelling unit without consent of the tenant and without notice to the tenant, for the purpose of serving notices required or permitted under Chapter 90, the rental agreement or any provision of applicable law.

(b) In case of an emergency, a landlord may enter the dwelling unit or any portion of the premises under a tenant's exclusive control without consent of the tenant, without notice to the tenant and at any time. "Emergency" includes but is not limited to a repair problem that, unless remedied immediately, is likely to cause serious damage to the premises. If a landlord makes an emergency entry in the tenant's absence, the landlord shall give the tenant actual notice within 24 hours after the entry, and the notice shall include the fact of the entry, the date and time of the entry, the nature of the emergency and the names of the persons who entered.

(c) If the tenant requests repairs or maintenance in writing, the landlord or persons acting on behalf of the landlord, without further notice, may enter upon demand, in the tenant's absence or without the tenant's consent, for the purpose of making the requested repairs until the repairs are completed. The tenant's written request may specify allowable times. Otherwise, the entry must be at a reasonable time. The authorization to enter

provided by the tenant's written request expires after seven days, unless the repairs are in process and the landlord is making a reasonable effort to complete the repairs in a timely manner. If the person entering to do the repairs is not the landlord, upon request of the tenant, the person must show the tenant written evidence from the landlord authorizing that person to act for the landlord in making the repairs.

(d) A landlord and tenant may agree that the landlord or the landlord's agent may enter the dwelling unit and the premises without notice at reasonable times for the purpose of showing the premises to a prospective buyer, provided that the agreement:

(A) Is executed at a time when the landlord is actively engaged in attempts to sell the premises;

(B) Is reflected in a writing separate from the rental agreement and signed by both parties; and

(C) Is supported by separate consideration recited in the agreement.

(e) In all other cases, unless there is an agreement between the landlord and the tenant to the contrary regarding a specific entry, the landlord shall give the tenant at least 24 hours' actual notice of the intent of the landlord to enter and the landlord may enter only at reasonable times. The landlord may not enter if the tenant, after receiving the landlord's notice, denies consent to enter. The tenant must assert this denial of consent by giving actual notice of the denial to the landlord or the landlord's agent or by attaching a written notice of the denial in a secure manner to the main entrance to that portion of the premises or dwelling unit of which the tenant has exclusive control, prior to or at the time of the landlord's attempt to enter.

(2) A landlord shall not abuse the right of access or use it to harass the tenant. A tenant shall not unreasonably withhold consent from the landlord to enter.

(3) In the case of a facility, the landlord may, upon less than 24 hours' actual notice to the tenant and during reasonable hours, enter onto the rented space for the purpose of normal maintenance only.

(4) A landlord has no other right of access except:

(a) Pursuant to court order;

(b) As permitted by ORS 90.410(2); or

(c) When the tenant has abandoned or surrendered the premises.

(5) If a landlord is required by a governmental agency to enter a dwelling unit or any portion of the premises under a tenant's exclusive control, but the landlord fails to gain entry after a good faith effort in compliance with this section, the landlord shall not be found in violation of any state statute or local ordinance due to the failure.

(6) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or may terminate the rental agreement. In addition, the landlord may recover actual damages.

(7) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which has the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the reoccurrence of the conduct or may terminate the rental agreement. In addition, the tenant may recover actual damages not less than an amount equal to a month's rent.

90.360. Effect of landlord noncompliance with rental agreement or obligation to maintain premises;

Generally:

(1)

(a) Except as provided in Chapter 90, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with ORS 90.320, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after delivery of the notice if the breach is not remedied in seven days in the case of an essential service or 30 days in all other cases, and the rental agreement shall terminate as provided in the notice subject to paragraphs (b) to (d) of this subsection. However, in the case of a week-to-week tenancy, the rental agreement will terminate upon a date not less than seven days after the landlord's receipt of the notice if the breach is not remedied.

(b) If the breach is remediable by repairs, the payment of damages or otherwise and if the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.

(c) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement. However, in the case of a week-to-week tenancy, the tenant may terminate the rental agreement upon at least seven days' written notice specifying the breach and date of termination of the rental agreement.

(d) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the family of the tenant or other person on the premises with the consent of the tenant.

(2) Except as provided in Chapter 90, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or ORS 90.320.

(3) (3) The remedy provided in subsection (2) of this section is in addition to any right of the tenant arising under subsection (1) of this section.

(4) If the rental agreement is terminated, the landlord shall return all security deposits and prepaid rent recoverable by the tenant under ORS 90.300.

90.365. Effect of deliberate refusal or negligent failure of landlord to supply heat, water, electricity or other essential services;

remedy.

. (1) If contrary to the rental agreement or ORS 90.320 the landlord deliberately refuses or is grossly negligent in failing to supply any essential service, the tenant may give written notice to the landlord specifying the breach and may:

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. (a) Procure reasonable amounts of the essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

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. (b) Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

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. (c) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

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. (2) In addition to the remedy provided in subsection (1)(c) of this section the tenant may recover the actual and reasonable cost or fair and reasonable value of reasonably comparable substitute housing.

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(3)If, contrary to the rental agreement or ORS 90.320 the landlord negligently fails to repair any cooking appliance or refrigerator supplied or required to be supplied by the landlord, or to supply any other essential service, the tenant may give written notice to the landlord specifying the breach and may cause the necessary work to be done in a workmanlike manner and, after submitting to the landlord receipts or an agreed upon itemized statement, deduct from the rent the actual and reasonable cost or the fair and reasonable value of the work not exceeding $500:

(a) The landlord and tenant may agree, at any time, to allow the tenant to exceed the monetary limits of this subsection when making reasonable repairs.

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. (b) Notwithstanding subsection (5)(a) of this section, in case of emergency, written notice required by this subsection, or attempted oral notice followed by written notice, may be given as promptly as the conditions permit.

(c) In the case of a faulty cooking appliance or refrigerator, "reasonable notice" under subsection (5)(a) of this section shall be determined in light of the degree to which the tenant has been deprived of cooking or refrigeration facilities.

(d) This subsection shall not be construed to require a landlord to supply a cooking appliance or a refrigerator if the landlord did not supply or agree to supply a cooking appliance or refrigerator to the tenant.

(4) If the tenant proceeds under this section, the tenant may not proceed under ORS 90.360 as to that breach.

(5) Rights of the tenant under this section do not arise:

(a) Until the tenant has given reasonable notice under the circumstances, in writing, to the landlord to enable the landlord to provide the essential service; or

(b) If the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person on the premises with the tenant's consent.

(6) Notice required under this section shall be delivered personally or sent by first class mail.

(7) The landlord may specify people to do all work under this section as long as the tenant's rights under this section are not diminished.

RHODE ISLAND

§ 34-18-22 Landlord to maintain premises. – (a) A landlord shall:

(1) Comply with the requirements of applicable building and housing codes affecting health and safety;

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a clean and safe condition;

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him or her;

(5) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit as required by § 45-24.3-6, or applicable local codes if more restrictive, and arrange for their removal; and

(6) Supply running water and reasonable amounts of hot water at all times as required by § 45-24.3-7, or applicable local codes if more restrictive, and reasonable heat as required by § 45-24.3-9, or applicable local codes if more restrictive, between October 1 and May 1, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

(b) If the duty imposed by subsection (a)(1) of this section is greater than any duty imposed by any other paragraph of that subsection, the landlord's duty shall be determined by reference to subsection (a)(1) of this section.

(c) The landlord and tenant of a dwelling unit may agree in writing that the tenant perform specified repairs, maintenance tasks, alterations and remodeling but only if:

(1) The agreement of the parties is entered into in good faith and set forth in a writing signed by the parties and supported by adequate consideration;

(2) The work is not necessary to cure noncompliance with subsection (a)(1) of this section; and

(3) The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

§ 34-18-29 Failure to deliver possession. – (a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in § 34-18-21, rent abates until

possession is delivered and the tenant may:

(1) Terminate the rental agreement upon at least five (5) days' written notice to the landlord, and, upon termination, the landlord shall return all prepaid rent and security; or

(2) Demand performance of the rental agreement by the landlord and, if the tenant elects, bring action for possession of the dwelling unit against the landlord.

(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than three (3) months' periodic rent or threefold the actual damages sustained, whichever is greater, and reasonable attorney's fees.

§ 34-18-31 Wrongful failure to supply heat, water, hot water, or essential services. – (a) If, contrary to the rental agreement or § 34-18-22, the landlord willfully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential service, the tenant may give reasonable notice to the landlord specifying the breach and may:

(1) Take reasonable and appropriate measures to secure reasonable amounts of heat, running water, hot water, electric, gas, and other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the periodic rent; or

(2) Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(3) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(b) In addition to the remedy provided in subsection (a)(3) of this section, the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under subsection (a) of this section, may recover reasonable attorney's fees.

(c) If the tenant proceeds under this section, he or she may not proceed under § 34-18-28 or § 34-18-30 as to that breach.

(d) Rights of the tenant under this section do not arise until he or she has given notice to the landlord, nor does this section apply if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his or her family, or other person on the premises with his or her consent.

§ 34-18-33 Fire or casualty damage. – (a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(1) Immediately vacate the premises and notify the landlord in writing within fourteen (14) days thereafter of his or her intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenants' liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(b) If the rental agreement is terminated the landlord shall return all security recoverable under § 34-18-19 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

(c) This section shall not be construed to limit the right of the landlord to recover in an action in tort damages resulting from a fire or other casualty damage caused either negligently or deliberately by the tenant.

SOUTH CAROLINA

SECTION 27-40-440. Landlord to maintain premises.

(a) A landlord shall:

(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(3) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;

(4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

(b) If the duty imposed by paragraph (1) of subsection [a] is greater than any duty imposed by any other paragraph of that subsection, the landlord's duty must be determined by reference to paragraph (1) of subsection [a].

(c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraph (5) of subsection [a] and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord and tenant of any dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;

(2) the work is not necessary to cure noncompliance with subsection [a][1] of this section;

(3) the agreement does not diminish or affect the obligations of the landlord to other tenants in the premises.

SECTION 27-40-530. Access.

(a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(b) A landlord or his agent may enter the dwelling unit without consent of the tenant:

(1) At any time in case of emergency - prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency;

(2) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect, or pest treatment, and the like, provided that the right to enter to provide regularly scheduled periodic services is conspicuously set forth in writing in the rental agreement and that prior to entering, the landlord announces his intent to enter to perform services; or

(3) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the landlord announces his intent to enter to perform services.

(c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in cases under item

(b) above, the landlord shall give the tenant at least twenty-four hours notice of his intent to enter and may enter only at reasonable times.

(d) A landlord has no other right of access except:

(1) pursuant to court order;

(2) as permitted by Sections 27-40-720 and 27-40-730;

(3) when accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejectment proceedings; or

(4) unless the tenant has abandoned or surrendered the premises.

(e) A tenant shall not change locks on the dwelling unit without the permission of the landlord.

SECTION 27-40-610. Noncompliance by landlord in general.

(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with Section 27-40-440 materially affecting health and safety or the physical condition of the property, the tenant may

deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen days after receipt of the notice if the breach is not remedied within fourteen days. The rental agreement shall terminate as provided in the notice except that:

(1) The rental agreement shall not terminate by reason of the breach:

(i) if the breach is remedial by repairs or otherwise and the landlord adequately remedies the breach before the date specified in the notice; or (ii) if such remedy for a breach not affecting health and safety cannot be remedied within fourteen days, but is commenced within the fourteen-day period and is pursued in good faith to completion within a reasonable time.

(2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the tenant's permission or who is allowed access to the premises by the tenant.

(b) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief in a magistrate's or circuit court, without posting bond, for any noncompliance by the landlord with the rental agreement or Section 27-40-440. If the landlord's noncompliance is wilful, the tenant may recover reasonable attorney's fees.

(c) If the rental agreement is terminated, the landlord shall return security recoverable by the tenant under Section 27-40-410. If the landlord's noncompliance is wilful, the tenant may recover reasonable attorney's fees.

SECTION 27-40-620. Failure to deliver possession.

(a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in Section 27-40-430, rent abates until possession is delivered and the tenant may:

(1) terminate the rental agreement upon at least five days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security; or

(2) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the actual damages sustained by him. Where the landlord is unable to deliver possession due to a previous tenant remaining in possession without the landlord's consent, after the expiration of the term of their rental agreement or its termination, the landlord is not liable for damages pursuant to this subsection, if the landlord made reasonable efforts to obtain possession of the premises.

(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than three months' periodic rent or twice the actual damages sustained, whichever is greater, and reasonable attorney's fees.

SECTION 27-40-630. Wrongful failure to provide essential services.

(a) If the landlord is negligent or willful in failing to provide essential services as

required by the rental agreement or Section 27-40-440, the tenant may give written notice to the landlord specifying the breach and may:

(1) procure reasonable amounts of the required essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or

(2) recover damages based upon the diminution in the fair-market rental value of the dwelling unit and reasonable attorney's fees.

(b) If the tenant proceeds under this section, he may not proceed under Section 27-40-610 as to that breach.

(c) Under no circumstances should this section be interpreted to authorize the tenant to make repairs on the rental property and deduct the cost of the repairs from rent. In the event that the tenant unlawfully acts without the landlord's consent and authorizes repairs, any mechanic's lien arising therefrom shall be unenforceable.

(d) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the tenant's permission or who is allowed access to the premises by the tenant.

SECTION 27-40-650. Fire or casualty damage.

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to the extent that normal use and occupancy of the dwelling unit is substantially impaired, the tenant may:

(1) immediately vacate the premises and notify the landlord in writing within seven days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair-market rental value of the dwelling unit.

(b) Unless the fire or casualty was due to the tenant's negligence or otherwise caused by the tenant, if the rental agreement is terminated, the landlord shall return security recoverable under Section 27-40-410 and all prepaid rent. Accounting for rent in the event of termination or apportionment must be made as of the date of the fire or casualty. A landlord may withhold the tenant's security deposit or prepaid rent if the fire or casualty was due to the tenant's negligence or otherwise caused by the tenant; however, if the landlord withholds a security deposit or prepaid rent, he must comply with the notice requirement in Section 27-40-410[a].

SOUTH DAKOTA

43-32-6. Obligations of lessor of real property--Tenant's remedies against lessor.

A lessor shall deliver the leased premises to the lessee and secure his quiet enjoyment thereof against all lawful claimants. If the lessor of residential property unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the tenant, the tenant may sue for injunctive relief, recover possession by suit, or terminate the rental agreement and, in any case, recover from the lessor damages in an amount equal to two months rent and the return of any advance rent and deposit paid to the lessor by the lessee.

43-32-9. Failure of lessor to repair premises--Lessee's remedies.

If within a reasonable time after notice to the lessor of conditions requiring repair to make the premises fit for human habitation and to place the same in good and safe working order which the lessor ought to repair he neglects to do so, the lessee may repair the same himself and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from additional charges of rent or performance of other conditions.

If the cost of necessary repairs exceeds one month's rent, after written notice stating the specific reason for the withholding, the lessee may withhold payment of rent and immediately deposit it in a separate bank or savings and loan account, written evidence of such action to be provided to the lessor upon deposit, maintained only for the purpose of making repairs until such time as the lessor makes the repairs, at which time the lessee shall release the deposit to the lessor or until sufficient money is accumulated in the account for the lessee to cause the repairs to be made and paid for.

43-32-19. Termination of lease by tenant--Neglect of landlord to place tenant in quiet possession of premises--Neglect to keep premises in good condition--Destruction of premises.

A tenant may terminate a lease before the end of the term:

(1) When the landlord does not within a reasonable time after request fulfill his obligations, if any, as to placing and securing the tenant in quiet possession of the premises or putting the premises into good condition or repairing the same; or

(2) When the greater part of the leased premises or that part which was, and which the landlord had at the time of leasing, reason to believe was the material inducement to the tenant to enter into the contract, is destroyed, from any other cause than the ordinary negligence of the tenant.

TEXAS

Sec. 92.008. INTERRUPTION OF UTILITIES.

(a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) Except as provided by Subsections (c) and (d), a landlord may not interrupt or cause the interruption of water, wastewater, gas, or electric service furnished to a tenant by the landlord as an incident of the tenancy or by other agreement unless the interruption results from bona fide repairs, construction, or an emergency.

(c) A landlord may interrupt or cause the interruption of electrical service furnished to a tenant by the landlord as an incident of the tenancy or by other agreement if:

(1) the electrical service furnished to the tenant is individually metered or submetered for the dwelling unit;

(2) the electrical service connection with the utility company is in the name of the landlord or the landlord's agent; and

(3) the landlord complies with the rules adopted by the Public Utility Commission of Texas for discontinuance of submetered electrical service.

(d) A landlord may interrupt or cause the interruption of electrical service furnished to a tenant by the landlord as an incident of the tenancy or by other agreement if:

(1) the electrical service furnished to the tenant is not individually metered or submetered for the dwelling unit;

(2) the electrical service connection with the utility company is in the name of the landlord or the landlord's agent;

(3) the tenant is at least seven days late in paying the rent;

(4) the landlord has mailed or hand-delivered to the tenant at least five days before the date the electrical service is interrupted a written notice that states:

(a) the earliest date of the proposed interruption of electrical service;

(b) the amount of rent the tenant must pay to avert the interruption; and

(c) the name and location of the individual to whom or the location of the on-site management office where the delinquent rent may be paid during the landlord's normal business hours;

(5) the interruption does not begin before or after the landlord's normal business hours; and

(6) the interruption does not begin on a day, or on a day immediately preceding a day, when the landlord or other designated individual is not available or the on-site management office is not open to accept rent and restore electrical service.

(e) A landlord who interrupts electrical service under Subsection (c) or (d) shall restore the service not later than two hours after the time the tenant tenders, during the landlord's normal business hours, payment of the delinquent electric bill or rent owed to the landlord.

(f) If a landlord or a landlord's agent violates this section, the tenant may:

(1) either recover possession of the premises or terminate the lease; and

(2) recover from the landlord an amount equal to the sum of the tenant's actual damages, one month's rent or $500, whichever is greater, reasonable attorney's fees, and court costs, less any delinquent rents or other sums for which the tenant is liable to the landlord.

(g) A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void.

Sec. 92.052. LANDLORD'S DUTY TO REPAIR OR REMEDY.

(a) A landlord shall make a diligent effort to repair or remedy a condition if:

(1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is normally paid;

(2) the tenant is not delinquent in the payment of rent at the time notice is given; and

(3) the condition materially affects the physical health or safety of an ordinary tenant.

(b) Unless the condition was caused by normal wear and tear, the landlord does not have a duty during the lease term or a renewal or extension to repair or remedy a condition caused by:

(1) the tenant;

(2) a lawful occupant in the tenant's dwelling;

(3) a member of the tenant's family; or

(4) a guest or invitee of the tenant.

(c) This subchapter does not require the landlord:

(1) to furnish utilities from a utility company if as a practical matter the utility lines of the company are not reasonably available; or

(2) to furnish security guards.

(d) The tenant's notice under Subsection (a) must be in writing only if the tenant's lease is in writing and requires written notice.

Sec. 92.054. CASUALTY LOSS.

(a) If a condition results from an insured casualty loss, such as fire, smoke, hail, explosion, or a similar cause, the period for repair does not begin until the landlord receives the insurance proceeds.

(b) If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed. If the lease is terminated, the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

(c) If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court. A landlord and tenant may agree otherwise in a written lease.

57-22-3. Duties of owners and renters -- Generally.

(1) Each owner and his agent renting or leasing a residential rental unit shall maintain that unit in a condition fit for human habitation and in accordance with local ordinances and the rules of the board of health having jurisdiction in the area in which the residential rental unit is located. Each residential rental unit shall have electrical systems, heating, plumbing, and hot and cold water.

(2) Each renter shall cooperate in maintaining his residential rental unit in accordance with this chapter.

(3) This chapter does not apply to breakage, malfunctions, or other conditions which do not materially affect the physical health or safety of the ordinary renter.

(4) Any duty in this act may be allocated to a different party by explicit written agreement signed by the parties.

57-22-4. Owner's duties -- Maintenance of common areas, building, and utilities -- Duty to correct -- No duty to correct condition caused by renter -- Owner may refuse to correct.

(1) To protect the physical health and safety of the ordinary renter, each owner shall:

(a) not rent the premises unless they are safe, sanitary, and fit for human occupancy;

(b) maintain common areas of the residential rental unit in a sanitary and safe condition;

(c) maintain electrical systems, plumbing, heating, and hot and cold water;

(d) maintain other appliances and facilities as specifically contracted in the lease agreement; and

(e) for buildings containing more than two residential rental units, provide and maintain appropriate receptacles for garbage and other waste and arrange for its removal, except to the extent that renters and owners otherwise agree.

(2) In the event the renter believes the residential rental unit does not comply with the standards for health and safety required under this chapter, the renter shall give written notice of the noncompliance to the owner. Within a reasonable time after receipt of this notice, the owner shall commence action to correct the condition of the unit. The notice required by this subsection shall be served pursuant to Section **78-36-6**.

(3) The owner need not correct or remedy any condition caused by the renter, the renter's family, or the renter's guests or invitees by inappropriate use or misuse of the property during the rental term or any extension of it.

(4) The owner may refuse to correct the condition of the residential rental unit and terminate the rental agreement if the unit is unfit for occupancy. If the owner refuses to correct the condition and intends to terminate the rental agreement, he shall notify the renter in writing within a reasonable time after receipt of the notice of noncompliance. If the rental agreement is terminated, the rent paid shall be prorated to the date the agreement is terminated, and any balance shall be refunded to the renter along with any deposit due.

(5) The owner is not liable under this chapter for claims for mental suffering or anguish.

57-22-5. Renter's duties -- Cleanliness and sanitation -- Compliance with written agreement -- Destruction of property, interference with peaceful enjoyment prohibited.

(1) Each renter shall:

(a) comply with the rules of the board of health having jurisdiction in the area in which the residential rental unit is located which materially affect physical health and safety;

(b) maintain the premises occupied in a clean and safe condition and shall not unreasonably burden any common area;

(c) dispose of all garbage and other waste in a clean and safe manner;

(d) maintain all plumbing fixtures in as sanitary a condition as the fixtures permit;

(e) use all electrical, plumbing, sanitary, heating, and other facilities and appliances in a reasonable manner;

(f) occupy the residential rental unit in the manner for which it was designed, but the renter may not increase the number of occupants above that specified in the rental agreement without written permission of the owner;

(g) be current on all payments required by the rental agreement; and

(h) comply with all appropriate requirements of the rental agreement between the owner and the renter, which may include either a prohibition on, or the allowance of, smoking tobacco products within the residential rental unit, or on the premises, or both.

(2) No renter may:

(a) intentionally or negligently destroy, deface, damage, impair, or remove any part of the residential rental unit or knowingly permit any person to do so;

(b) interfere with the peaceful enjoyment of the residential rental unit of another renter; or

(c) unreasonably deny access to, refuse entry to, or withhold consent to enter the residential rental unit to the owner, agent, or manager for the purpose of making repairs to the unit.

57-22-5.1. Crime victim's right to new locks.

(1) For purposes of this section, "crime victim" means a victim of:

(a) domestic violence, as defined in Section **77-36-1**;

(b) stalking as defined in Section **76-5-106.5**;

(c) a crime under Title 76, Chapter 5, Part 4, Sexual Offenses;

(d) burglary or aggravated burglary under Section **76-6-202** or **76-6-203**; or

(e) dating violence, consisting of verbal, emotional, psychological, physical, or sexual abuse of one person by another in a dating relationship.

(2) An acceptable form of documentation of an act listed in Subsection (1) is:

(a) a protective order protecting the renter issued pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, subsequent to a hearing of which the petitioner and respondent have been given notice under Title 30, Chapter 6; or

(b) a copy of a police report documenting an act listed in Subsection (1).

(3) (a) A renter who is a crime victim may require the renter's owner to install a new lock to the renter's residential rental unit if the renter:

(i) provides the owner with an acceptable form of documentation of an act listed in Subsection (1); and

(ii) pays for the cost of installing the new lock.

(b) An owner may comply with Subsection (3)(a) by:

(i) rekeying the lock if the lock is in good working condition; or

(ii) changing the entire locking mechanism with a locking mechanism of equal or greater quality than the lock being replaced.

(c) An owner who installs a new lock under Subsection (3)(a) may retain a copy of the key that opens the new lock.

(d) Notwithstanding any rental agreement, an owner who installs a new lock under Subsection (3)(a) shall refuse to provide a copy of the key that opens the new lock to the perpetrator of the act listed in Subsection (1).

(e) Notwithstanding Section **78-36-12**, if an owner refuses to provide a copy of the key under Subsection (3)(d) to a perpetrator who is not barred from the residential rental unit by a protective order but is a renter on the rental agreement, the perpetrator may file a petition with a court of competent jurisdiction within 30 days to:

(i) establish whether the perpetrator should be given a key and allowed access to the residential rental unit; or

(ii) whether the perpetrator should be relieved of further liability under the rental agreement because of the owner's exclusion of the perpetrator from the residential rental unit.

(f) Notwithstanding Subsection (3)(e)(ii), a perpetrator may not be relieved of further liability under the rental agreement if the perpetrator is found by the court to have committed the act upon which the landlord's exclusion of the perpetrator is based.

57-22-6. Renter's remedies -- Compliance required -- Notice to owner or agent-renter entitled to judicial remedy -- Attorneys' fees.

(1) A renter is not entitled to the remedies set forth in this section unless the renter is in compliance with all provisions of Section **57-22-5**.

(2) If a reasonable time has elapsed after the renter has served written notice on the owner under Section **57-22-4** and the condition described in the notice has not been corrected, the renter may cause a "notice to repair or correct condition" to be prepared and served on the owner pursuant to Section **78-36-6**. This notice shall:

(a) recite the previous notice served under Subsection **57-22-4** (2);

(b) recite the number of days that have elapsed since the notice was served and state that under the circumstances such a period of time constitutes the reasonable time allowed under Section **57-22-4**;

(c) state the conditions included in the previous notice which have not been corrected;

(d) make demand that the uncorrected conditions be corrected; and

(e) state that in the event of failure of the owner to commence reasonable corrective action within three days the renter will seek redress in the courts.

(3) (a) If the owner has not corrected or used due diligence to correct the conditions following the notice under this section, the renter is entitled to bring an action in district court.

(b) The court shall endorse on the summons the number of days within which the owner is required to appear and defend the action, which shall not be less than three nor more than 20 days from the date of service.

(c) Upon a showing of an unjustified refusal to correct or the failure to use due diligence to correct a condition described in this chapter, the renter is entitled to damages and injunctive relief as determined by the court.

(d) The damages available to the renter include rent improperly retained or collected. Injunctive relief includes a declaration of the court terminating the rental agreement and an order for the repayment of any deposit and rent due.

(e) The prevailing party shall be awarded attorneys' fees commensurate with the cost of the action brought.

(4) (a) If the renter is notified that the owner intends to terminate the rental agreement pursuant to Section **57-22-4**, the renter is entitled to receive the balance of the rent due and the deposit on the rental unit within ten days of the date the agreement is terminated.

(b) No renter may be required to move sooner than ten days after the date of notice.

section 4457. Landlord obligations; habitability

(a) Warranty of habitability. In any residential rental agreement, the landlord shall be deemed to covenant and warrant to deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation and which comply with the requirements of applicable building, housing and health regulations.

(b) Waiver. No rental agreement shall contain any provision by which the tenant waives the protections of the implied warranty of habitability. Any such waiver shall be deemed contrary to public policy and shall be unenforceable and void.

(c) Heat and water. As part of the implied warranty of habitability, the landlord shall ensure that the dwelling unit has heating facilities which are capable of safely providing a reasonable amount of heat. Every landlord who provides heat as part of the rental agreement shall at all times supply a reasonable amount of heat to the dwelling unit. The landlord shall provide an adequate amount of water to each dwelling unit properly connected with hot and cold water lines. The hot water lines shall be connected with supplied water-heating facilities which are capable of heating sufficient water to permit an adequate amount to be drawn. This subsection shall not apply to a dwelling unit intended and rented for summer occupancy or as a hunting camp. (Added 1985, No. 175 (Adj. Sess.), section 1.)

section 4458. Habitability; tenant remedies

(a) If the landlord fails to comply with the landlord's obligations for habitability and, after receiving actual notice of the noncompliance from the tenant, a governmental entity or a qualified independent inspector, the landlord fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, the tenant may:

(1) withhold the payment of rent for the period of the noncompliance;

(2) obtain injunctive relief;

(3) recover damages, costs and reasonable attorney's fees; and

(4) terminate the rental agreement on reasonable notice.

(b) Tenant remedies under this section are not available if the noncompliance was caused by the negligent or deliberate act or omission of the tenant or a person on the premises with the tenant's consent. (Added 1985, No. 175 (Adj. Sess.), section 1; 1999, No. 115 (Adj. Sess.), section 6.)

VIRGINIA

§ 55-248.10:1. Landlord and tenant remedies for abuse of access.

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable attorney's fees.

§ 55-248.13. Landlord to maintain fit premises.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;

2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

3. Keep all common areas shared by two or more dwelling units of the premises in a clean and structurally safe condition;

4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;

5. Use reasonable efforts to maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any written notices from a tenant as provided in subdivision A 8 of § 55-248.16;

6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the collection, storage, and removal of ashes, garbage, rubbish and other waste incidental to the occupancy of two or more dwelling units and arrange for the removal of same; and

7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection.

B. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision 1.

C. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions 3, 6 and 7 of subsection A and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

§ 55-248.13:1. Landlord to provide locks and peepholes.

The governing body of any county, city or town may require by ordinance that any landlord who rents five or more dwelling units in any one building shall install:

1. Dead-bolt locks which meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) for new multi-family construction and peepholes in any exterior swinging entrance door to any such unit; however, any door having a glass panel shall not require a peephole.

2. Manufacturer's locks which meet the requirements of the Uniform Statewide Building Code and removable metal pins or charlie bars in accordance with the Uniform Statewide Building Code on exterior sliding glass doors located in a building at any level or levels designated in the ordinance.

3. Locking devices which meet the requirements of the Uniform Statewide Building Code on all exterior windows.

Any ordinance adopted pursuant to this section shall further provide that any landlord subject to the ordinance shall have a reasonable time as determined by the governing body in which to comply with the requirements of the ordinance.

§ 55-248.21. Noncompliance by landlord.

Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this chapter, materially affecting health and safety, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if such breach is not remedied in 21 days.

If the landlord commits a breach which is not remediable, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach, and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the landlord has been served with a prior written notice which required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the

subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent whether known by the tenant or not. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this chapter. The tenant shall be entitled to recover reasonable attorneys' fees unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances. If the rental agreement is terminated due to the landlord's noncompliance, the landlord shall return the security deposit in accordance with § 55-248.15:1.

§ 55-248.21:1. Early termination of rental agreement by military personnel.

A. Any member of the armed forces of the United States or a member of the National Guard serving on full-time duty or as a Civil Service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit; (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit; (iii) is discharged or released from active duty with the armed forces of the United States or from his full-time duty or technician status with the National Guard; or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter, confirming the orders, from the tenant's commanding officer.

The final rent shall be prorated to the date of termination and shall be payable at such time as would have otherwise been required by the terms of the rental agreement.

The landlord may not charge any liquidated damages.

C. Nothing in this section shall affect the tenant's obligations established by § 55-248.16.

D. The exemption provided in subdivision 10 of subsection A of § 55-248.5 shall not

apply to this section.

§ 55-248.22. Failure to deliver possession.

If the landlord willfully fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may (i) terminate the rental agreement upon at least five days' written notice to the landlord and upon termination, the landlord shall return all prepaid rent and security deposits; or (ii) demand performance of the rental agreement by the landlord. If the tenant elects, he may file an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person the actual damages sustained by him and reasonable attorney's fees.

§ 55-248.23. Wrongful failure to supply heat, water, hot water or essential services.

A. If contrary to the rental agreement or provisions of this chapter the landlord willfully or negligently fails to supply heat, running water, hot water, electricity, gas or other essential service, the tenant must serve a written notice on the landlord specifying the breach, if acting under this section and, in such event, and after a reasonable time allowed the landlord to correct such breach, may:

1. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

2. Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance, as determined by the court.

B. If the tenant proceeds under this section, he shall be entitled to recover reasonable attorney fees; however, he may not proceed under § 55-248.21 as to that breach. The rights of the tenant under this section shall not arise until he has given written notice to the landlord; however, no rights arise if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent.

§ 55-248.24. Fire or casualty damage.

If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and within 14 days thereafter, serve on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, § 55-226 shall apply.

The landlord may terminate the rental agreement by giving the tenant 45 days' notice of his intention to terminate the rental agreement based upon the landlord's determination that such damage requires the removal of the tenant and the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § 55-248.15:1 and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, tenant's guests, invitees or authorized occupants were the cause of the damage or casualty, in which case the landlord shall account to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty. Accounting for rent in the event of termination or apportionment shall be made as of the date of the casualty.

§ 55-248.27. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or of light, electricity or adequate sewage disposal facilities; or an infestation of rodents, except if the property is a one-family dwelling; or of the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the premises are located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection C.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable;

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter; and

3. It shall be sufficient answer or rejoinder to such a declaration if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact

exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

C. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:

1. Terminating the rental agreement or ordering the premises surrendered to the landlord;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rents within five days of date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;

7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure;

8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the

tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.

D. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

§ 55-248.31. Noncompliance with rental agreement; monetary penalty.

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55-248.16 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such

violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55-248.31:01 based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1, 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16, and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession

of the premises as provided in § 55-248.35. If a check for rent is delivered to the landlord drawn on an account with insufficient funds and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check or certified check within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorneys' fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126.

G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55-248.16. The landlord shall be entitled to recover reasonable attorneys' fees unless the tenant proves by a preponderance of the evidence that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement provides for the payment of reasonable attorneys' fees in the event of a breach of the agreement or noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award reasonable attorneys' fees in any action based upon the tenancy in which the landlord prevails, including but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of any previous action to obtain possession or rent, unless in any such action, the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable.

WASHINGTON

Landlord duties

The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:__

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;__

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;__

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;__

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;__

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;__

(6) Provide reasonably adequate locks and furnish keys to the tenant;__

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;__

(8) Maintain the dwelling unit in reasonably weathertight condition;__

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;__

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;__

(11)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in *RCW 48.48.140. The notice shall inform the tenant of the tenant's responsibility to

maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of *RCW 48.48.140(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:__ (i) Whether the smoke detection device is hard-wired or battery operated;__ (ii) Whether the building has a fire sprinkler system;__ (iii) Whether the building has a fire alarm system;__ (iv) Whether the building has a smoking policy, and what that policy is;__ (v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;__ (vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants; and (vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.__ (b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.__ (c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed, and must be provided to current tenants as soon as possible, but not later than January 1, 2004; __

(12) Provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold. Information may be provided in written format individually to each tenant, or may be posted in a visible, public location at the dwelling unit property. The information must detail how tenants can control mold growth in their dwelling units to minimize the health risks associated with indoor mold. Landlords may obtain the information from the department's web site or, if requested by the landlord, the department must mail the information to the landlord in a printed format. When developing or changing the information, the department of health must include representatives of landlords in the development process. The information must be provided by the landlord to new tenants at the time the lease or rental agreement is signed, and must be provided to current tenants no later than January 1, 2006, or must be posted in a visible, public location at the dwelling unit property beginning July 24, 2005;__

(13) The landlord and his or her agents and employees are immune from civil liability for failure to comply with subsection (12) of this section except where the landlord and his or her agents and employees knowingly and intentionally do not comply with subsection (12) of this section; and__

(14) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent;__ No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or

remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section.

RCW 59.18.070 - Landlord failure to perform duties

If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060 or by the rental agreement, the tenant may, in addition to pursuit of remedies otherwise provided him by law, deliver written notice to the person designated in *RCW 59.18.060(11), or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. The landlord shall commence remedial action after receipt of such notice by the tenant as soon as possible but not later than the following time periods, except where circumstances are beyond the landlord's control:__ (1) Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life;__ (2) Not more than seventy-two hours, where the defective condition deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord; and__ (3) Not more than ten days in all other cases.__ In each instance the burden shall be on the landlord to see that remedial work under this section is completed promptly. If completion is delayed due to circumstances beyond the landlord's control, including the unavailability of financing, the landlord shall remedy the defective condition as soon as possible.

RCW 59.18.080 - Payment of rent condition to exercising remedies - Exceptions.

The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded him under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing.

RCW 59.18.085 Rental of condemned or unlawful dwelling - Tenant's remedies - Relocation assistance - penalties

(1) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions are corrected.__ (2) If a landlord knowingly violates subsection (1) of this section, the tenant shall recover either three months' periodic rent or up to treble the actual damages sustained as a result of the violation, whichever is greater, costs of suit, or arbitration and reasonable attorneys' fees. If the tenant elects to terminate

the tenancy as a result of the conditions leading to the posting, or if the appropriate governmental agency requires that the tenant vacate the premises, the tenant also shall recover:__ (a) The entire amount of any deposit prepaid by the tenant; and__ (b) All prepaid rent.__ (3)(a) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling will be condemned or will be unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord, who knew or should have known of the existence of these conditions, shall be required to pay relocation assistance to the displaced tenants except that:__ (i) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and directly results from conditions caused by a tenant's or any third party's illegal conduct without the landlord's prior knowledge;__ (ii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and results from conditions arising from a natural disaster such as, but not exclusively, an earthquake, tsunami, wind storm, or hurricane; and__ (iii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which a condemnation affects one or more dwelling units and the tenant's displacement is a direct result of the acquisition of the property by eminent domain.__ (b) Relocation assistance provided to displaced tenants under this subsection shall be the greater amount of two thousand dollars per dwelling unit or three times the monthly rent. In addition to relocation assistance, the landlord shall be required to pay to the displaced tenants the entire amount of any deposit prepaid by the tenant and all prepaid rent.__ (c) The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent to displaced tenants within seven days of the governmental agency sending notice of the condemnation, eviction, or displacement order to the landlord. The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent either by making individual payments by certified check to displaced tenants or by providing a certified check to the governmental agency ordering condemnation, eviction, or displacement, for distribution to the displaced tenants. If the landlord fails to complete payment of relocation assistance within the period required under this subsection, the city, town, county, or municipal corporation may advance the cost of the relocation assistance payments to the displaced tenants.__ (d) During the period from the date that a governmental agency responsible for the enforcement of a building, housing, or other appropriate code first notifies the landlord of conditions that violate applicable codes, statutes, ordinances, or regulations to the time that relocation assistance payments are paid to eligible tenants, or the conditions leading to the notification are corrected, the landlord may not:__ (i) Evict, harass, or intimidate tenants into vacating their units for the purpose of avoiding or diminishing application of this section;__ (ii) Reduce services to any tenant; or__ (iii) Materially increase or change the obligations of any tenant, including but not limited to any rent increase.

(e) Displaced tenants shall be entitled to recover any relocation assistance, prepaid deposits, and prepaid rent required by (b) of this subsection. In addition, displaced tenants shall be entitled to recover any actual damages sustained by them as a result of the condemnation, eviction, or displacement that exceed the amount of relocation assistance that is payable. In any action brought by displaced tenants to recover any payments or damages required or authorized by this subsection (3)(e) or (c) of this subsection that are

not paid by the landlord or advanced by the city, town, county, or municipal corporation, the displaced tenants shall also be entitled to recover their costs of suit or arbitration and reasonable attorneys' fees.__ (f) If, after sixty days from the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants, a landlord has failed to repay the amount of relocation assistance advanced by the city, town, county, or municipal corporation under (c) of this subsection, then the city, town, county, or municipal corporation shall assess civil penalties in the amount of fifty dollars per day for each tenant to whom the city, town, county, or municipal corporation has advanced a relocation assistance payment.__ (g) In addition to the penalties set forth in (f) of this subsection, interest will accrue on the amount of relocation assistance paid by the city, town, county, or municipal corporation for which the property owner has not reimbursed the city, town, county, or municipal corporation. The rate of interest shall be the maximum legal rate of interest permitted under RCW 19.52.020, commencing thirty days after the date that the city first advanced relocation assistance funds to the displaced tenants.__ (h) If the city, town, county, or municipal corporation must initiate legal action in order to recover the amount of relocation assistance payments that it has advanced to low-income tenants, including any interest and penalties under (f) and (g) of this subsection, the city, town, county, or municipal corporation shall be entitled to attorneys' fees and costs arising from its legal action.__ (4) The government agency that has notified the landlord that a dwelling will be condemned or will be unlawful to occupy shall notify the displaced tenants that they may be entitled to relocation assistance under this section.__ (5) No payment received by a displaced tenant under this section may be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of any tax imposed under Title 82 RCW, and the payments shall not be deducted from any amount to which any recipient would otherwise be entitled under Title 74 RCW.

RCW 59.18.090 - Landlord's failure to remedy defective condition - Tenant's choice of actions

If, after receipt of written notice, and expiration of the applicable period of time, as provided in RCW 59.18.070, the landlord fails to remedy the defective condition within a reasonable time the tenant may:__ (1) Terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement, in which case he shall be discharged from payment of rent for any period following the quitting date, and shall be entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280;__ (2) Bring an action in an appropriate court, or at arbitration if so agreed, for any remedy provided under this chapter or otherwise provided by law; or__ (3) Pursue other remedies available under this chapter.

RCW 59.18.100 - Landlord's failure to carry out duties - Repairs effected by tenant - Procedure - Deduction of cost from rent - Limitations

(1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the landlord pursuant to

RCW 59.18.070, the tenant may submit to the landlord or his designated agent by certified mail or in person a good faith estimate by the tenant of the cost to perform the repairs necessary to correct the defective condition if the repair is to be done by licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, the cost if the repair is to be done by responsible persons capable of performing such repairs. Such estimate may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070: PROVIDED, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in *RCW 59.18.060 (9), and (11): PROVIDED FURTHER, That if the tenant utilizes this section for repairs pursuant to RCW 59.18.060(6), the tenant shall promptly provide the landlord with a key to any new or replaced locks. The amount the tenant may deduct from the rent may vary from the estimate, but cannot exceed the one-month limit as described in subsection (2) of this section.__ (2) If the landlord fails to commence remedial action of the defective condition within the applicable time period after receipt of notice and the estimate from the tenant, the tenant may contract with a licensed or registered person, or with a responsible person capable of performing the repair if no license or registration is required, to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or his designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit per repair: PROVIDED, That when the landlord must commence to remedy the defective condition within ten days as provided in RCW 59.18.070(3), the tenant cannot contract for repairs for ten days after notice or five days after the landlord receives the estimate, whichever is later: PROVIDED FURTHER, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing two month's rental of the tenant's unit.__ (3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within the applicable time period, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, and if the tenant has given notice under RCW 59.18.070, although no estimate shall be necessary under this subsection, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: PROVIDED, That repairs under this subsection are limited to defects within the leased premises: PROVIDED FURTHER, That the cost per repair shall not exceed one-half month's rent of the unit and that the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one month's rent of the unit.__ (4) The provisions of this section shall not:__ (a) Create a relationship of employer and employee between landlord and tenant; or__ (b) Create liability under the workers' compensation act; or__ (c) Constitute the tenant as an agent of the landlord for the purposes of **RCW 60.04.010 and 60.04.040._

(5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.__ (6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs

himself in return for cash payment or a reasonable reduction in rent, the agreement thereof to be agreed upon between the parties, and such agreement does not alter the landlord's obligations under this chapter.

RCW 59.18.110 - Failure of Landlord to carry out duties - determination by court or arbitrator - judgment against landlord for diminished rental value and repair costs - enforcement of judgment - reduction in rent under certain conditions

(1) If a court or an arbitrator determines that:__ (a) A landlord has failed to carry out a duty or duties imposed by RCW 59.18.060; and__ (b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with RCW 59.18.070 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.18.100 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.__ The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs: PROVIDED, That the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs: PROVIDED FURTHER, That such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any one calendar year.__ (2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the premises until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise.

RCW 59.18.115 - Substandard and dangerous conditions - notice to landlord - government certification - escrow account

(1) The legislature finds that some tenants live in residences that are substandard and dangerous to their health and safety and that the repair and deduct remedies of RCW 59.18.100 may not be adequate to remedy substandard and dangerous conditions. Therefore, an extraordinary remedy is necessary if the conditions substantially endanger or impair the health and safety of the tenant.__ (2)(a) If a landlord fails to fulfill any substantial obligation imposed by RCW 59.18.060 that substantially endangers or impairs the health or safety of a tenant, including (i) structural members that are of insufficient size or strength to carry imposed loads with safety, (ii) exposure of the occupants to the weather, (iii) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (iv) lack of water, including hot water, (v) heating or ventilation systems that are not functional or are hazardous, (vi) defective, hazardous, or missing electrical wiring or electrical service, (vii) defective or inadequate exits that increase the risk of injury to occupants, and (viii) conditions that increase the risk of fire, the tenant shall give notice in writing to the landlord, specifying the conditions, acts, omissions, or violations. Such notice shall be sent to the landlord or to the person or place where rent is normally paid.__ (b) If after receipt of the notice described in (a) of this subsection the landlord fails to remedy the condition or conditions within a reasonable amount of time under RCW 59.18.070, the tenant may request that the local government provide for an

inspection of the premises with regard to the specific condition or conditions that exist as provided in (a) of this subsection. The local government shall have the appropriate government official, or may designate a public or disinterested private person or company capable of conducting the inspection and making the certification, conduct an inspection of the specific condition or conditions listed by the tenant, and shall not inspect nor be liable for any other condition or conditions of the premises. The purpose of this inspection is to verify, to the best of the inspector's ability, whether the tenant's listed condition or conditions exist and substantially endanger the tenant's health or safety under (a) of this subsection; the inspection is for the purposes of this private civil remedy, and therefore shall not be related to any other governmental function such as enforcement of any code, ordinance, or state law.__ (c) The local government or its designee, after receiving the request from the tenant to conduct an inspection under this section, shall conduct the inspection and make any certification within a reasonable amount of time not more than five days from the date of receipt of the request. The local government or its designee may enter the premises at any reasonable time to do the inspection, provided that he or she first shall display proper credentials and request entry. The local government or its designee shall whenever practicable, taking into consideration the imminence of any threat to the tenant's health or safety, give the landlord at least twenty-four hours notice of the date and time of inspection and provide the landlord with an opportunity to be present at the time of the inspection. The landlord shall have no power or authority to prohibit entry for the inspection.__ (d) The local government or its designee shall certify whether the condition or the conditions specified by the tenant do exist and do make the premises substantially unfit for human habitation or can be a substantial risk to the health and safety of the tenant as described in (a) of this subsection. The certification shall be provided to the tenant, and a copy shall be included by the tenant with the notice sent to the landlord under subsection (3) of this section. The certification may be appealed to the local board of appeals, but the appeal shall not delay or preclude the tenant from proceeding with the escrow under this section.

(e) The tenant shall not be entitled to deposit rent in escrow pursuant to this section unless the tenant first makes a good faith determination that he or she is unable to repair the conditions described in the certification issued pursuant to subsection (2)(d) of this section through use of the repair remedies authorized by RCW 59.18.100.__ (f) If the local government or its designee certifies that the condition or conditions specified by the tenant exist, the tenant shall then either pay the periodic rent due to the landlord or deposit all periodic rent then called for in the rental agreement and all rent thereafter called for in the rental agreement into an escrow account maintained by a person authorized by law to set up and maintain escrow accounts, including escrow companies under chapter 18.44 RCW, financial institutions, or attorneys, or with the clerk of the court of the district or superior court where the property is located. These depositories are hereinafter referred to as "escrow." The tenant shall notify the landlord in writing of the deposit by mailing the notice postage prepaid by first class mail or by delivering the notice to the landlord promptly but not more than twenty-four hours after the deposit.__ (g) This section, when elected as a remedy by the tenant by sending the notice under subsection (3) of this section, shall be the exclusive remedy available to the tenant regarding defects described in the certification under subsection (2)(d) of this section: PROVIDED, That the tenant may simultaneously commence or pursue an action in an appropriate court, or at arbitration if so agreed, to determine past, present, or future

diminution in rental value of the premises due to any defective conditions.__ (3) The notice to the landlord of the rent escrow under this section shall be a sworn statement by the tenant in substantially the following form:___

NOTICE TO LANDLORD OF RENT ESCROW

Name of tenant:

Name of landlord:

Name and address of escrow:

Date of deposit of rent into escrow:

Amount of rent deposited into escrow:

The following condition has been certified by a local building official to substantially endanger, impair, or affect the health or safety of a tenant:

That written notice of the conditions needing repair was provided to the landlord on . . ., and . . . days have elapsed and the repairs have not been made.

. . . . . .

(Sworn Signature)

(4) The escrow shall place all rent deposited in a separate rent escrow account in the name of the escrow in a bank or savings and loan association domiciled in this state. The escrow shall keep in a separate docket an account of each deposit, with the name and address of the tenant, and the name and address of the landlord and of the agent, if any.

(5)(a) A landlord who receives notice that the rent due has been deposited with an escrow pursuant to subsection (2) of this section may:

(i) Apply to the escrow for release of the funds after the local government certifies that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly repaired. The escrow shall release the funds to the landlord less any escrow costs for which the tenant is entitled to reimbursement pursuant to this section, immediately upon written receipt of the local government certification that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly completed.

(ii) File an action with the court and apply to the court for release of the rent on the grounds that the tenant did not comply with the notice requirement of subsection (2) or

(3) of this section. Proceedings under this subsection shall be governed by the time, service, and filing requirements of RCW 59.18.370 regarding show cause hearings.

(iii) File an action with the court and apply to the court for release of the rent on the grounds that there was no violation of any obligation imposed upon the landlord or that the condition has been remedied.

(iv) This action may be filed in any court having jurisdiction, including small claims court. If the tenant has vacated the premises or if the landlord has failed to commence an action with the court for release of the funds within sixty days after rent is deposited in escrow, the tenant may file an action to determine how and when any rent deposited in escrow shall be released or disbursed. The landlord shall not commence an unlawful detainer action for nonpayment of rent by serving or filing a summons and complaint if the tenant initially pays the rent called for in the rental agreement that is due into escrow as provided for under this section on or before the date rent is due or on or before the expiration of a three-day notice to pay rent or vacate and continues to pay the rent into escrow as the rent becomes due or prior to the expiration of a three-day notice to pay rent or vacate; provided that the landlord shall not be barred from commencing an unlawful detainer action for nonpayment of rent if the amount of rent that is paid into escrow is less than the amount of rent agreed upon in the rental agreement between the parties.

(b) The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, although any counterclaim shall be dismissed without prejudice if the court or arbitrator determines that the tenant failed to follow the notice requirements contained in this section. Any counterclaim can only claim diminished rental value related to conditions specified by the tenant in the notice required under subsection (3) of this section. This limitation on the tenant's right to counterclaim shall not affect the tenant's right to bring his or her own separate action. A trial shall be held within sixty days of the date of filing of the landlord's or tenant's complaint.

(c) The tenant shall be entitled to reimbursement for any escrow costs or fees incurred for setting up or maintaining an escrow account pursuant to this section, unless the tenant did not comply with the notice requirements of subsection (2) or (3) of this section. Any escrow fees that are incurred for which the tenant is entitled to reimbursement shall be deducted from the rent deposited in escrow and remitted to the tenant at such time as any rent is released to the landlord. The prevailing party in any court action or arbitration brought under this section may also be awarded its costs and reasonable attorneys' fees.

(d) If a court determines a diminished rental value of the premises, the tenant may pay the rent due based on the diminished value of the premises into escrow until the landlord makes the necessary repairs.

(6)(a) If a landlord brings an action for the release of rent deposited, the court may, upon application of the landlord, release part of the rent on deposit for payment of the debt service on the premises, the insurance premiums for the premises, utility services, and repairs to the rental unit.

(b) In determining whether to release rent for the payments described in (a) of this subsection, the court shall consider the amount of rent the landlord receives from other rental units in the buildings of which the residential premises are a part, the cost of operating those units, and the costs which may be required to remedy the condition contained in the notice. The court shall also consider whether the expenses are due or have already been paid, whether the landlord has other financial resources, or whether the landlord or tenant will suffer irreparable damage. The court may request the landlord to provide additional security, such as a bond, prior to authorizing release of any of the funds in escrow.

RCW 59.18.120 - Defective Condition - Unfeasible to remedy defect - termination of tenancy

If a court or arbitrator determines a defective condition as described in RCW 59.18.060 to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by RCW 59.18.070, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: PROVIDED, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises.

RCW 59.18.150 Landlord's right of entry - purposes - searches by fire officials - conditions

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.__ (2) Upon written notice of intent to seek a search warrant, when a tenant or landlord denies a fire official the right to search a dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the dwelling unit sought to be searched that criminal fire code violations exist in the dwelling unit, a court of competent jurisdiction shall issue a warrant allowing a search of the dwelling unit.__ Upon written notice of intent to seek a search warrant, when a landlord denies a fire official the right to search the common areas of the rental building other than the dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the common area sought to be searched that a criminal fire code violation exists in those areas, a court of competent jurisdiction shall issue a warrant allowing a search of the common areas in which the violation is alleged.__ The superior court and courts of limited jurisdiction organized under Titles 335 and35A RCW have jurisdiction to issue such search warrants. Evidence obtained pursuant to any such search may be used in a civil or administrative enforcement action.__ (3) As used in this section:__ (a) "Common areas" means a common area or those areas that contain electrical, plumbing, and mechanical equipment and facilities used for the operation of the rental building.__ (b) "Fire official" means any fire official authorized to enforce the state or local fire code.__ (4) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.__ (5) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord

shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.__ (6) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.__ (7) A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.

(8) Nothing in this section is intended to abrogate or modify in any way any common law right or privilege.

RCW 59.18.354 Threatening behavior by landlord - termination of agreement - financial obligations

If a tenant is threatened by the landlord with a firearm or other deadly weapon as defined in RCW 9A.04.110, and the threat leads to an arrest of the landlord, then the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement. The tenant is discharged from payment of rent for any period following the quitting date, and is entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

RCW - 59.18.290 Removal or exclusion of tenant from premises - holding over or excluding landlord from premises after termination date

(1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.__ (2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees.

WEST VIRGINIA

37-6-5. Notice to terminate tenancy.__A tenancy from year to year may be terminated by either party giving notice in writing to the other, at_least three months prior to the end of any year, of his intention to terminate the same. A periodic tenancy, in_which the period is less than one year, may be terminated by like notice, or by notice for one full period_before the end of any period. When such notice is to the tenant, it may be served upon him, or upon anyone_holding under him the leased premises, or any part thereof. When it is by the tenant, it may be served upon_anyone who at the time owns the premises in whole or in part, or the agent of such owner, or according to the_common law. This section shall not apply where, by special agreement, some other period of notice is fixed,_or no notice is to be given; nor shall notice be necessary from or to a tenant whose term is to end at a certain_time.

WISCONSIN

704.07 Repairs; untenantability.

(1) APPLICATION OF SECTION. This section applies to any nonresidential tenancy if there is no contrary provision in writing signed by both parties and to all residential tenancies. An agreement to waive the requirements of this section in a residential tenancy is void. Nothing in this section is intended to affect rights and duties arising under other provisions of the statutes.

(2) DUTY OF LANDLORD.

(a) Except for repairs made necessary by the negligence of, or improper use of the premises by, the tenant, the landlord has a duty to do all of the following:

1. Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

2. Keep in a reasonable state of repair all equipment under the landlordÂ's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

3. Make all necessary structural repairs.

4. Except for residential premises subject to a local housing code, and except as provided in sub. (3) (b), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

5. For a residential tenancy, comply with any local housing code applicable to the premises.

(b) If the premises are part of a building, other parts of which are occupied by one or more other tenants, negligence or improper use by one tenant does not relieve the landlord from the landlordÂ's duty as to the other tenants to make repairs as provided in par. (a).

(c) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either sub. (3) or (4) governs.

(3) DUTY OF TENANT.

(a) If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.

(b) Except for residential premises subject to a local housing code, the tenant is also

under a duty to keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to the rent.

(c) A tenant in a residential tenancy shall comply with a local housing code applicable to the premises.

(4) UNTENANTABILITY. If the premises become untenantable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of sub. (2) materially affecting the health or safety of the tenant, the tenant may remove from the premises unless the landlord proceeds promptly to repair or rebuild or eliminate the health hazard or the substantial violation of sub. (2) materially affecting the health or safety of the tenant; or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant. If the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. This section does not authorize rent to be withheld in full, if the tenant remains in possession. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenantable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenantable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

APPENDIX II - SURRENDER OF PREMISES SAMPLE FORM

Surrender of Premises

The undersigned parties, Joe Tenant and Larry Landlord, have agreed on the day of _____, 2006, that Joe Tenant will surrender to Larry Landlord the premises known as 123 East Main Street, Anytown, Anystate, 43221, turning over possession by noon of the day of , 2006. All obligations of Joe Tenant found on the attached lease agreement shall cease.

For consideration of this surrender, Joe Tenant shall pay Larry Landlord the sum of_____ Dollars. Larry Landlord agrees to inspect the premises and return the security deposit of Joe Tenant or the security deposit less an itemization of proper deductions from the deposit to the address listed below within 30 days of the return of the premises.

Joe Tenant

Larry Landlord

APPENDIX B - FURTHER STRATEGIES FOR GETTING OUT OF YOUR LEASE

OFFER TO PAY A PERCENTAGE OF THE RENT TO HELP RERENT THE APARTMENT

I recently had a case where a husband and wife had met with a real estate agent (who worked on behalf of the landlord) concerning signing a one year lease for an apartment. The couple had recently moved to the Central Ohio area and wanted to buy a home but needed an apartment until they found a home. The realtor must have indicated that they had to sign a one year lease because the couple asked if they could get out of the lease early if they found a home. The realtor indicated that they could as long as the realtor could find someone else to move in and take over the rental payments.

Sure enough, a few months later the couple found a home and gave notice that they were moving out. They received no response from the realtor. They called the realtor several times and never got a return call. The couple decided to pay an extra month's rent and to also leave their security deposit with the landlord. Because they never heard back from the realtor they assumed that the apartment had been re-rented.

Several months later, they received a bill from the landlord for back rent and late fees. This came as a shock to the couple as they thought the apartment was re-rented. The tenants responded by indicating just that and also requested that the landlord give them proof of all efforts made to re- rent the apartment. In Ohio, landlords have a duty to make reasonable efforts to re-rent apartments in such cases. They can't just sit back and do nothing while collecting rent.

Many months passed and the landlord and tenant went back and forth via correspondence. The landlord finally supplied proof of his efforts to re-rent the apartment some 9 months after the first request was made to do so.

I got involved in the case and took the realtor's deposition (this is where I ask him questions outside of court and he answers under oath). It turns out the realtor worked as the leasing agent for several landlords in this same complex where the couple's apartment was. After receiving notice that the couple was moving out, the realtor rented two similar apartments to other renters but not the couple's apartment. When the judge found this out, he was not impressed. The judge didn't like the fact that the realtor was serving more than one master. If the landlord has a duty to make efforts to re-rent the apartment and he hires a real estate agent to fulfill his duty, how can the real estate agent effectively do this if he works for several landlords in the same complex?

We resolved the case without going to trial but the judge seemed to be indicating that he may rule that the tenant's duty to pay rent ended when similar apartments belonging to other landlords in the same complex were rented out. The landlord was going to argue that the apartments were different because the ones that were rented just had a one car garage and his had a two car garage and a fireplace.

The tenants could have defeated such an argument if at the time they gave notice they were moving out, they also included a sentence indicating that they would be willing to kick in a

certain amount of money to help rent the place out. In other words, if the apartment was advertised at $1000 a month and no one was interested, the former tenants could have told the landlord, "Hey, we'll throw in $200 a month for the rest of the lease term to help get it rented." The landlord could then advertise the place for $800 a month instead of $1000 and would have a better chance of renting it out.

Under such a scenario, the tenant saves $800 a month and the landlord gets his all his rent instead of later suing the original tenants and waiting for a court date over a year later.

If a tenant has to break a lease, it is far better that the landlord and tenant work together to resolve the situation rather than the landlord insisting that the tenant owes all the money for the breach