68 P.S. §§ 250.101-250.602

"LANDLORD AND TENANT ACT OF 1951"

ARTICLE 1 PRELIMINARY PROVISIONS

Section 250.101. Short title

This act shall be known and may be cited as "The Landlord and Tenant Act of 1951."

Section 250.102. Definitions

As used in this act --

"Abandoned mobile home" means the vacating of a mobile home by a resident without notice to the community, together with the nonpayment of required rent, fees, service charges and assessments and one or more of the following:

(1) The removal of most or all personal property from the mobile home.
(2) Failure to use, maintain or return to the mobile home.
(3) Cancellation of insurance covering the mobile home.
(4) Termination of utility services to the mobile home.

"Justice of the peace" means district justices, aldermen, magistrates or any other court having jurisdiction over landlord and tenant matters, excluding a court of common pleas.

"Mobile home park" means any site, lot, field or tract of land, privately or publicly owned or operated, upon which three or more mobile homes occupied for dwelling or sleeping purposes are or are intended to be located, regardless of whether or not a charge is made for such accommodation.

"Mobile home resident" or **"resident"** means an owner of a mobile home who leases or rents space in a mobile home park. The term does not include a person who rents or leases a mobile home.

"Mobile home space" means a plot of ground within a mobile home park designed for accommodation of one mobile home.

"Person" means natural persons, copartnerships, associations, private and public corporations, authorities, fiduciaries, the United States and any other country and their respective governmental agencies, this Commonwealth and any other state and their respective political subdivisions and agencies.

"Personal property" means goods and chattels, including fixtures and buildings erected by the tenant and which he has the right to remove, agricultural crops, whether harvested or growing, and livestock and poultry.

"Real property" means messuages, lands, tenements, real estate, buildings, parts thereof or any estate or interest therein and shall include any personalty on real property which is demised with the real property.

"Tenants' organization or association" means a group of tenants organized for any purpose directly related to their rights or duties as tenants.

Section 250.103. Provisions excluded From act

Nothing contained in this act shall be construed to include or in any manner repeal or modify any existing law–

(1) Providing for preference of rent in case personal property liable to distress is taken and sold by virtue of any execution and providing for the payment of such rent from the proceeds of such execution.

(2) Denying to a plaintiff the right to stay an execution without the consent of the landlord having a preference for rent due payable from the proceeds of such execution;

(3) Providing that a sale on distress shall be stayed where the personal property distrained upon is levied upon by a sheriff or where a receiver or a trustee or receiver in bankruptcy is appointed for the person whose property was distrained, and providing for a lien for the rent or the proceeds of the sale of such personal property by such officer and the payment of such rent, together with the costs of executing the landlord's warrant, from the proceeds of such sale;

(4) Providing for preference of rent in cases of insolvency and assignment for the benefit of creditors and in bankruptcy proceedings;

(5) Providing for preference of rent in the settlement of estates of decedents;

(6) Fixing the liability of the tenant to pay taxes assessed against real property occupied by him and permitting the tenant to recover the amount of the tax so paid from the landlord or to defalcate such amount against rent due or becoming due.

(7) Providing for the issuing of writs of estrepement to stay waste committed by a tenant or by others allowed by a tenant to commit waste and for the procedure in such cases;

(8) Fixing the duties and liabilities of tenants and the rights of landlords in connection with actions of ejectment brought by third parties;

(9) Prescribing special proceedings for the obtaining of possession of real property purchased at tax or judicial sales and providing for and defining the rights, remedies, duties and liabilities of such purchasers and tenants affected thereby;

(10) Except as herein specially provided, fixing fees of justices of the peace, aldermen, magistrates, sheriffs or constables in any proceedings affecting the relationship of landlord and tenant.

Section 250.104. Rights of persons acquiring title by descent or purchase

Any person who acquires title to real property by descent or purchase shall be liable to the same duties and shall have the same rights, powers and remedies in relation to the property as the person from whom title was acquired.

Section 250.105. Sublessees

Any person who is a sublessee shall be subject to the provisions of the lease between the lessor and the lessee.

ARTICLE II CREATION OF LEASES; STATUTE OF FRAUDS; MORTGAGING OF LEASEHOLDS

Section 250.201. Leases for not more than three years

Real property, including any personal property thereon, may be leased for a term of not more than three years by a landlord or his agent to a tenant or his agent, by oral or written contract or agreement.

Section 250.202. Leases for more then three years

Real property, including any personal property thereon, may be leased for a term of more than three years by a landlord to a tenant or by their respective agents lawfully authorized in writing. Any such lease must be in writing and signed by the parties making or creating the same, otherwise it shall have the force and effect of a lease at will only and shall not be given any greater force or effect either in law or equity, notwithstanding any consideration therefor, unless the tenancy has continued for more than one year and the landlord and tenant have recognized its rightful existence by claiming and admitting liability for the rent, in which case the tenancy shall become one from year to year.

Section 250.203. Assignment, grant and surrender of leases to be in writing; exception

No lease of any real property made or created for a term of more than three years shall be assigned, granted or surrendered except in writing signed by the party assigning, granting or surrendering the same or his agent, unless such assigning, granting or surrendering shall result from operation of law.

Section 250.204. Mortgaging of leaseholds

Every tenant of real property may mortgage his lease or term in the demised premises, together with all buildings, fixtures and machinery thereon and appurtenant thereto belonging to the tenant, except as otherwise limited or prohibited by the terms of his lease,

Any such mortgaging of the tenant's interest and title shall have the same effect with respect to lien, notice, evidence and priority of payment as is provided by law in the case of the mortgaging of a freehold interest and title.

Any such mortgage shall be acknowledged and placed on record in the proper county, together with the lease or a memorandum thereof complying with the provisions of the act of June 2, 1959 (P.L. 454), as in the case of mortgages on freehold interests. If the lease or such a memorandum thereof shall have been recorded in the office of the recorder of deeds of the proper county before the time of the recording of the mortgage in lieu of being recorded together with the mortgage, such recording of the lease or memorandum shall be deemed sufficient compliance with this section if full and distinct reference is made in said mortgage to (a) the book and page where the lease or such memorandum is recorded, or (b) the date of recording and instrument number or other identifying number with respect to the recording of such lease or memorandum.

Any such mortgage of a tenant's interest and title may be enforced in the same manner as mortgages on freehold interests.

No such mortgage shall in any wise interfere with the landlord's rights, priority or remedies for rent.

As used in this section, the word "tenant" shall include a subtenant holding under a sublease from a tenant under a prime lease from the owner or from a subtenant under a sublease provided that the prime lease and the intervening subleases, if any, or memoranda thereof complying with the provisions of the act of June 2, 1959 (P.L. 454) shall have been recorded in the office of the recorder of deeds of the proper county at ro before the time of recording of the sublease to such subtenant. As applied to a mortgage made by a subtenant, the word "lease" wherever used in this section shall mean sublease.

Section 250.205. Participation in Tenants' Association

No individual unit lease on residential property shall be terminated or nonrenewed on the basis of the participation of any tenant or member of the tenant's family in a tenants' organization or association.

Section 250.206. Statement of Escrowed Funds

Whenever an agency or department certifies that a dwelling is uninhabitable and a tenant elects to pay rent into an escrow account established under the act of January 24, 1966 (1965 P.L. 1534, No. 536), referred to as the City Rent Withholding Act, it shall be the duty of the certifying agency or department to submit a monthly statement of escrowed funds to the landlord affected by first class mail.

ARTICLE III RECOVERY OF RENT BY ASSUMPSIT AND DISTRESS

Section 250.301. Recovery of rent by assumpsit

Any landlord may recover from a tenant rent in arrears in an action of assumpsit as debts of similar amount are by law recoverable. In any such action, interest at the legal rate on the amount of rent due may be allowed if deemed equitable under the circumstances of the particular case.

Section 250.302. Power to distrain for rent; notice

Personal property located upon premises occupied by a tenant shall, unless exempted by article four of this act[1], be subject to distress for any rent reserved and due. Such distress may be made by the landlord or by his agent duly authorized thereto in writing. Such distress may be made on any day, except Sunday, between the hours of seven ante meridian and seven post meridian and not at any other time, except where the tenant through his act prevents the execution of the warrant during such hours.

Notice in writing of such distress, stating the cause of such taking, specifying the date of levy and the personal property distrained sufficiently to inform the tenant or owner what personal property is distrained and the amount of rent in arrears, shall be given, within five days after making the distress, to the tenant and any other owner known to the landlord, personally, or by mailing the same to the tenant or any other owner at the premises, or by posting the same conspicuously on the premises charged with the rent.

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[1] 68 P.S. §250.401 et seq.

A landlord or such agent may also, in the manner above provided, distrain personal property located on the premises but only that belonging to the tenant, for arrears of rent due on any lease which has ended and terminated, if such distress is made during the continuance of the landlord's title or interest in property.

Section 250.303. Collection of rent in special cases

(a) The following persons shall have the right to collect all rent due by assumpsit or by distraint on personal property located on the real property subject to such rent:

(1) The owner of a ground rent;

(2) The personal representative of a deceased landlord or deceased tenant for life who has demised the real property subject to his estate, or a deceased landlord whose real property has escheated to the Commonwealth, whether such rent accrued prior to or after the death of the decedent and until the termination of the administration of the estate;

(3) The escheator appointed for the purpose of collecting rents;

(4) The spouse of a deceased landlord to whom real property has been set aside at his or her allowance by law; and,

(5) A widow who is the party named in a deed, agreement or decree of court under which a charge is made upon such real estate for the payment of installments of dower.

(b) Any person given the right by this section to collect and distrain for rent shall be deemed for the purposes of this article to be a landlord.

Section 250.304. Collection of rent by purchasers at sheriff's and judicial sales

In the case of a tenant whose right of possession is not paramount to that of the purchaser at a sheriff's or other judicial sale, the latter shall have the right as a landlord to collect by assumpsit or to distrain for rent from the date of the acknowledgment of his deed, except for such fractional part of a quarter as the tenant, if a farmer or one engaged in raising crops or produce, or such fractional part of a month in other cases, as the tenant may, in accordance with the terms of his letting, have paid as an advance payment prior to the date of the acknowledgment of said deed. In the case of a tenant whose right of possession is paramount to that of such purchaser, advance rent paid prior to the date of acknowledgment of the purchaser's deed shall be deemed properly paid though paid prior to its due date, unless it is so paid with the actual notice of the pendency of the proceedings resulting in the sale or with intent to defeat the rights of a purchaser thereat.

The right of possession of a tenant for years shall not be deemed paramount to that of a purchaser at a tax sale.

The right of possession of a tenant shall be deemed paramount to that of a purchaser at a judicial sale if and only if the letting to him shall precede in point of date the entry of the judgment, order or decree on which such sale was had and also shall precede the recording or registering of the mortgage, deed or will, if any, through which by legal proceedings the purchaser derives title, and shall not be paramount if the letting is made with actual notice to such tenant of the contemplated entry of such judgment, order or decree or of the fact of the execution of such mortgage, deed or other instrument of writing and with intent to avoid the effect thereof.

Section 250.305. Distress of property fraudulently removed

In case any tenant of any real property shall fraudulently or clandestinely remove from the demised premises his personal property with intent to prevent the landlord from distraining the same for arrears of rent, it shall be lawful for the landlord or his agent, within the space of thirty days next ensuing such removal, to take and seize such personal property, wherever the same may be found, in distress for said arrears of rent and to proceed to sell the same, as hereinafter provided, as if the personal property had actually been distrained upon on the demised premises.

Section 250.306. Replevin by tenant or owner

The tenant or owner of any personal property distrained on may, within five days next after notice of such distress, replevy the same. All proceedings in replevin shall be conducted in accordance with general law and applicable rules of procedure governing actions of replevin.

Section 250.307. Proceeding by tenant to determine set-off

Any court of record or court not of record having jurisdiction in civil actions at law may entertain an action to defalcate by a tenant against a landlord where the landlord has distrained for arrears of rent, to compel the landlord to set-off any account which the tenant may have against the landlord. No such court shall entertain any such action where the rent or set-off claimed is in excess of its civil jurisdiction. Proceedings in such actions shall be the same as in actions of assumpsit.

The court shall determine the amount of rent in arrears and the amount of the set-off, if any, and enter judgment in favor of the proper party for the balance due.

If such judgment is in favor of the landlord he may, in lieu of issuing execution thereon, proceed with his distress for the amount of such judgment. If the landlord shall sell more

personal property than necessary to satisfy such judgment and costs and fail to pay the overplus to the tenant, he shall be liable in trespass to double the amount of the sum so detained, together with the costs of suit. If the landlord shall proceed to sell any personal property after notice or any such proceeding to defalcate and before judgment in his favor thereon, he shall be liable in trespass to double the amount by which the sum realized from such sale exceeds the sum to which he shall be found to be entitled by the final judgment in the defalcation proceeding, together with the costs of suit in the defalcation proceeding, if such judgment be in his favor.

If the landlord proceeds with the distress, he shall satisfy the judgement to the extent of the amount realized on the sale, less the costs of the distress, or on his failure to do so, the tenant may proceed by rule to have such satisfaction entered.

Section 250.308. Appraisement of property levied upon

If the tenant or owner of the personal property distrained upon fails to replevy the same within said five days next after distress and notice thereof, the person distraining may, with the sheriff or his deputy or any constable or his deputy, which officer upon demand of the landlord shall aid and assist, cause the personal property so distrained to be appraised by two disinterested and competent persons appointed by said officer.

The appraisers shall each take the following oath or affirmation to be administered by the assisting officer:

"I ....., do solemnly swear (or affirm) that I will well and truly, according to my understanding, appraise the personal property of ....., distrained on for rent by ....."

Each appraiser shall receive two dollars ($2) per diem for his services in making the appraisement, to be paid out of the proceeds of the sale.

Section 250.309. Sale and notice thereof; distribution of proceeds

After the appraisement has been completed, the sheriff, deputy sheriff, constable or deputy constable shall fix a day, time and place of sale, of which at least six days public notice in writing shall be given by handbills. The notice of sale shall specify the personal property to be sold sufficiently to inform the tenant or owner and to induce bidders to attend the sale. On the day and at the time fixed for the sale or on any day and time to which said sale may be adjourned, the sheriff, deputy sheriff, constable or deputy constable shall publicly sell the personal property so distrained for the best price that can be obtained for the same.

The proceeds of the sale shall be paid out in the following order: First, for the payment of any wages due by the tenant which by law are given preference and to the same extent and upon the same conditions of notice being given as required by the wage preference law and

notice of the claim to the officer executing the landlord's warrant; second, for the payment of the charges and costs for making the distress, appraisement and sale; third, for the satisfaction of the rent for which the personal property was distrained; fourth, any overplus for the use of the owner.

Section 250.310. Rights of purchasers of growing agricultural crops

The purchaser of any growing agricultural crops at a sale on distress for rent shall at all times have free ingress and egress to and from the premises where the same may be growing and the right to repair fences. He shall have the right to dig, cut, gather, lay up and thresh the same in the same manner as the tenant might legally have done and thereafter to carry the same away from the premises.

Section 250.311. Damages for removal of property distrained on

Any landlord having distrained upon personal property for rent due who is aggrieved by the unlawful removal thereof shall, in an action of trespass, recover treble damages, together with the costs of suit, against the offender or against the owner, if it be afterwards found that the personal property has come into his use or possession.

Section 250.312. Remedy in cases of improper distress

The landlord and his agent shall be liable to the tenant or the owner of the personal property distrained on in an action of trespass, (1) if the distress is for more rent than is due, (2) or if the amount of personal property distrained is unreasonably great, (3) or if made after a proper tender of the rent due was rejected, (4) or if the distress is conducted irregularly or oppressively, (5) or if any personal property taken in distress was, to the knowledge of the landlord or his agent, not distrainable, (6) or if the distress is made at an improper time, (7) or if the landlord or his agent receives notice, after the distress, from the owner or his agent or from the tenant having possession of the property that the personal property distrained on was not subject to distress and nevertheless proceeds with the sale without affording the owner a five day period after such notice to replevy such personal property.

Section 250.313. Remedy where distress and sale made and no rent due

In case any distress and sale of personal property shall be made for rent when no rent is due to the person distraining or to the person in whose name the distress has been taken, then the owner of the personal property shall, by action of trespass brought against the person distraining, recover double the value of the personal property so distrained and sold, together with the costs of suit.

ARTICLE IV EXEMPTIONS FROM DISTRESS AND SALE

Section 250.401. Tenant's exemption; appraisement

Unless the right of exemption has been waived by the tenant in writing, personal property to the value of three hundred dollars ($300), in addition to any other personal property specifically exempted by this article, shall be exempt from levy and sale by distress for rent.

The officer charged with the execution of any landlord's warrant shall, if requested by the tenant, summon two disinterested and competent persons, who shall be sworn or affirmed by such officer to appraise personal property, including bank notes, money, stocks, judgments or other indebtedness due the tenant, to the value of three hundred dollars ($300), which the tenant may elect to retain, and the property so elected and appraised shall be exempt from levy and sale in such distress proceedings.

Each appraiser shall be entitled to receive two dollars ($2.00) for his services.

Section 250.402. Wearing apparel; Bibles; school books; sewing machines and military accoutrements to be exempt

All wearing apparel of the tenant and his family, all Bibles and school books in use in the tenant's family, all sewing machines and other tools of trade used and owned by private families, and all uniforms, arms, ammunition and accoutrements of any commissioned officer or enlisted personnel of the National Guard or of the armed forces of the United States, shall be exempt from levy and sale on any landlord's warrant. Nothing contained in this section shall be construed to exempt sewing machines kept for sale or hire.

Section 250.403. Exemption of property on premises under lease or conditional sale contract subject to a security interest

The following personal property loaned to or leased or hired by any person, or sold in any transaction in which a purchase money security interest is taken or retained shall be exempt from levy and sale on distress for rent so long as the security interest or title thereto remains in the secured party, owner, lender, or lessor if written notice, specifically describing the personal property loaned, leased, hired, or made subject to a security interest, shall be given to the landlord or his agent at the time the said personal property is placed upon the demised premises or within ten days thereafter, which notice shall contain a statement of the respective amounts due on each article named in the notice, and when so given, shall be effective as to such landlord and any future owner or owners of said premises, that is to say--

(1) All pianos, melodeons and organs;

(2) All soda water apparatus and the appurtenances thereto;

(3) All sewing machines and typewriting machines; and all accounting,

tabulating, computing, bookkeeping, photocopying and other office equipment and machinery;

(4) All electric motors, electric fans, electric air conditioners and dynamos;

(5) All ice cream cabinets and ice cream containers and the appurtenances thereto;

(6) All household furniture and household goods;

(7) All patented shoe repairing machinery and tools;

(8) All beauty and barber shop furniture and equipment.

(9) All cigarette, candy, chewing gum, soft drink, milk, food and all other types of automatic merchandising service or amusement vending machines;

(10) All restaurant and bar furniture and equipment;

(11) All meat market and grocery store equipment;

(12) All industrial, mining and construction machinery and equipment not attached to the realty.

In the case of personal property enumerated in clauses (2),(3),(5),(7),(8),(9), (10),(11),and (12) of this section, notice may be given in the manner above provided or, in lieu thereof, the name and address of the owner, lender, lessor, or conditional vendor may be marked on or attached to said property on a visible part thereof.

Upon request at any reasonable time the owner, lender, lessor or conditional vendor of any personal property enumerated in this section shall advise the landlord or his agent as to the status of his account with the tenant. In default of such advice, it shall be conclusively presumed no balance is due on said account.

Any landlord may levy upon and sell on distress for rent any right or interest of the tenant in any personal property mentioned in this section, subject to the rights therein of the owner, lender, lessor or conditional vendor.

Section 250.404. Exemption of other property located on premises

The following personal property located on premises occupied by a tenant shall be exempt from levy and sale on distress for rent, i.e., personal property–

(1) Necessarily put in possession of the tenant in the course of his business by

those with whom the tenant deals or by those who employ the tenant;

(2) Actually held by the tenant for someone else in the course of trade, as agent or as consignee;

(3) Sold for a valuable consideration by the tenant before distress to any bona fide purchaser:[2] not privy to any fraud;

(4) Of any guest at an inn or hotel, or of a boarder at a boarding house where such property is in the exclusive use of such boarder.

(5) Of a decedent;

(6) Of the United States and its governmental agencies, or of the Commonwealth of Pennsylvania or of any political subdivision thereof;

(7) Of any public service company, essential to the performance of its public functions; or,

(8) Cattle or stock taken by the tenant to be fed or cared for on the leased premises for a consideration to be paid by the owner.

ARTICLE V RECOVERY OF POSSESSION

Section 250.501. Notice to quit

(a) A landlord desirous of repossessing real property from a tenant except real property which is a mobile home space as defined in the act of November 24, 1976 (P.L. 1176, No. 261)[3], known as the "Mobile Home Park Rights Act," may notify, in writing, the tenant to remove from the same at the expiration of the time specified in the notice under the following circumstances, namely, (1) Upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.

(b) Except as provided for in subsection (c), in case of the expiration of a term or of a forfeiture for breach of the conditions of the lease where the lease is for any term of one year or less or for an indeterminate time, the notice shall specify that the tenant shall remove within fifteen days from the date of service thereof, and when the lease is for more than one

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[2] Enrolled bill reads "purchase".

[3] 68 P.S. 398.1 et seq.

year, then within thirty days from the date of service thereof. In case of failure of the tenant, upon demand, to satisfy any rent reserved and due, the notice shall specify that the tenant shall remove within ten days from the date of the service thereof.

(c) In case of the expiration of a term or of a forfeiture for breach of the conditions of the lease involving a tenant of a mobile home park as defined in the "Mobile Home Park Rights Act," where the lease is for any term of less than one year or for an indeterminate time, the notice shall specify that the tenant shall remove within thirty days from the date of service thereof, and when the lease is for one year or more, then within three months from the date of service thereof. In case of failure of the tenant, upon demand, to satisfy any rent reserved and due, the notice, if given on or after April first and before September first, shall specify that the tenant shall remove within fifteen days from the date of the service thereof, and if given on or after September first and before April first, then within thirty days from the date of the service thereof.

(c.1) The owner of a mobile home park shall not be entitled to recovery of the mobile home space upon the termination of a lease with a resident regardless of the term of the lease if the resident:

(1) is complying with the rules of the mobile home park; and

(2) is paying the rent due; and

(3) desires to continue living in the mobile home park.

(c.2) The only basis for the recovery of a mobile home space by an owner of a mobile home park shall be:

(1) When a resident is legally evicted as provided under section 3 of the "Mobile Home Park Rights Act."

(2) When the owner and resident mutually agree in writing to the termination of a lease.

(3) At the expiration of a lease, if the resident determines that he no longer desires to reside in the park and so notifies the owner in writing.

(d) In case of termination due to the provisions of section 505-A[4], the notice shall specify that the tenant shall remove within ten days from the date of service thereof.

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[4] 68 P.S. §250.505-A.

(e) The notice above provided for may be for a lesser time or may be waived by the tenant if the lease so provides.

(f) The notice provided for in this section may be served personally on the tenant, or by leaving the same at the principal building upon the premises, or by posting the same conspicuously on the leased premises.

Section 250.502. Summons and service

(a) Upon the filing of the complaint, the justice of the peace shall issue a summons which reflects substantially the complaint, is directed to any writ server, constable or the sheriff of the county and commands that writ server, constable or sheriff to summon the tenant to appear before the justice of the peace to answer the complaint on a date not less than seven nor more than ten days from the date of the summons.

(b) The summons may be served personally on the tenant, by mail or by posting the summons conspicuously on the leased premises.

Section 250.503. Hearing; judgment; writ of possession; payment of rent by tenant

(a) On the day and at the time appointed or on a day to which the case may be adjourned, the justice of the peace shall proceed to hear the case. If it appears that the complaint has been sufficiently proven, the justice of the peace shall enter judgment against the tenant:

(1) that the real property be delivered up to the landlord;

(2) for damages, if any, for the unjust detention of the demised premises; and

(3) for the amount of rent, if any, which remains due and unpaid.

(b) At the request of the landlord, the justice of the peace shall, after the fifth day after the rendition of the judgment, issue a writ of possession directed to the writ server, constable or sheriff, commanding him to deliver forthwith actual possession of the real property to the landlord and to levy the costs and amount of judgment for damages and rent, if any, on the tenant, in the same manner as judgments and costs are levied and collected on writs of execution. The writ is to be served within no later than forty-eight hours and executed on the eleventh day following service upon the tenant of the leased premises. Service of the writ of possession shall be served personally on the tenant by personal service or by posting the writ conspicuously on the leased premises.

(c) At any time before any writ of possession is actually executed, the tenant

may, in any case for the recovery of possession solely because of failure to pay rent due, supersede and render the writ of no effect by paying to the writ server, constable or sheriff the rent actually in arrears and the costs.

Section 250.504. Return by constable or sheriff

The writ server, constable or sheriff shall make return of the writ of possession to the justice of the peace within ten days after receiving the writ. The return shall show: (1) the date, time, place and manner of service of the writ; (2) if the writ was satisfied by the payment of rent due or in arrears and costs by or on behalf of the tenant, the amount of that payment and its distribution; (3) the time and date of any forcible entry and ejectment, or that no entry for the purpose of ejectment had been made; and (4) his expenses and fees, which expenses and fees shall have been paid by the tenant or, if paid by the landlord, reimbursed to the landlord by the tenant in order to satisfy the writ.

Section 250.505. Abandoned mobile homes

(a) If a mobile home is abandoned by its residents for a period of thirty days or more, the owner of the mobile home park or other person or persons responsible for operation of the park may:

(1) Enter the mobile home and secure any appliances, furnishings, materials, supplies or other personal property therein and disconnect the mobile home from any utilities.

(2) Move the mobile home to a storage area within the mobile home park or to another location deemed necessary and proper without the requirement of obtaining a removal permit from the local taxing authority which would otherwise be required under section 407(e) of the act of May 22, 1933 (P.L. 853, No. 155)[5], known as "The General County Assessment Law," or section 617.1 of the act of May 21, 1943 (P.L. 571, No. 254)[6], known as "The Fourth to Eighth Class County Assessment Law." The mobile home shall continue to be subject to the lien for taxes assessed against it, but the real estate on which the home was and is located shall not be encumbered by the lien. The former mobile home residents shall be notified by mail and by posting on the home and at any other known address, or by any other means by which notice may be achieved, that the mobile home has been moved and of the new location of the mobile home.

(3) Assess removal charges and storage charges against the former mobile home residents.

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[5] 72 P.S. §5020-407(e).

[6] 72 P.S. §5453.617a.

(b) A person or persons acting as authorized under subsection (a) are not responsible for any loss or damage to a home or its contents or for any taxes, fees, assessments or other charges of any kind relating to the abandoned mobile home unless it is proven that the home removed was not an abandoned home, in which case the community owner and his agent shall be liable for the loss incurred by the homeowner.

Section 250.506 to 250.510. Repealed. 1978, April 28, P.L. 202, No. 53, §2(a)[1271], effective June 27, 1980

Section 250.511. Remedy to recover possession by ejectment preserved

Nothing contained in this article shall be construed as abolishing the right of any landlord to recover possession of any real property from a tenant by action of ejectment, or from instituting any amicable action of ejectment to recover possession of any real property by confessing judgment in accordance with the terms of any written contract or agreement.

Section 250.511a. Escrow funds limited

(a) No landlord may require a sum in excess of two months' rent to be deposited in escrow for the payment of damages to the leasehold premises and/or default in rent thereof during the first year of any lease.

(b) During the second and subsequent years of the lease or during any renewal of the original lease the amount require to be deposited may not exceed one month's rent.

(c) If, during the third or subsequent year of a lease, or during any renewal after the expiration of two years of tenancy, the landlord requires the one month's rent escrow provided herein, upon termination of the lease, or on surrender and acceptance of the leasehold premises, the escrow funds together with interest shall be returned to the tenant in accordance with sections 511.2 and 512[7].

(d) Whenever a tenant has been in possession of premises for a period of five years or greater, any increase or increases in rent shall not require a concomitant increase in any security deposit.

(e) This section applies only to the rental of residential property.

(f) Any attempted waiver of this section by a tenant by a contract or otherwise shall be void and unenforceable.

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[7] 68 P.S. §§250.511b and 250.512.

Section 250.511b. Interest on escrow funds held more than two years

(a) Except as otherwise provided in this section, all funds over one hundred dollars ($100) deposited with a lessor to secure the execution of a rental agreement on residential property in accordance with section 511.1[8] and pursuant to any lease newly executed or reexecuted after the effective date of this act shall be deposited in an escrow account of an institution regulated by the Federal Reserve Board, the Federal Home Loan Bank Board, Comptroller of the Currency, or the Pennsylvania Department of Banking. When any funds are deposited in any escrow account, interest-bearing or noninterest-bearing, the lessor shall thereupon notify in writing each of the tenants making any such deposit, giving the name and address of the banking institution in which such deposits are held, and the amount of such deposits.

(b) Whenever any money is required to be deposited in an interest-bearing escrow savings account, in accordance with section 511.1, then the lessor shall be entitled to receive as administrative expenses, a sum equivalent to one per cent per annum upon the security money so deposited, which shall be in lieu of all other administrative and custodial expenses. The balance of the interest paid shall be the money of the tenant making the deposit and will be paid to said tenant annually upon the anniversary date of the commencement of his lease.

(c) The provisions of this section shall apply only after the second anniversary of the deposit of escrow funds.

Section 250.511c. Bond in lieu of escrowing

Every landlord subject to the provisions of this act may, in lieu of depositing escrow funds, guarantee that any escrow funds, less cost of necessary repairs, including interest thereon, shall be returned to the tenant upon termination of the lease, or on surrender and acceptance of the leasehold premises. The guarantee of repayment of said escrow funds shall be secured by a good and sufficient guarantee bond issued by a bonding company authorized to do business in Pennsylvania.

Section 250.512. Recovery of improperly held escrow funds

(a) Every landlord shall within thirty days of termination of a lease or upon surrender and acceptance of the leasehold premises, whichever first occurs, provide a tenant with a written list of any damages to the leasehold premises for which the landlord claims the tenant is liable. Delivery of the list shall be accompanied by payment of the difference between any sum deposited in escrow, including any unpaid interest thereon, for the payment

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[8] 68 P.S. §250.511e.

of damages to the leasehold premises and the actual amount of damages to the leasehold premises caused by the tenant. Nothing in this section shall preclude the landlord from refusing to return the escrow fund, including any unpaid interest thereon, for nonpayment of rent or for the breach of any other condition in the lease by the tenant.

(b) Any landlord who fails to provide a written list within thirty days as required in subsection (a), above, shall forfeit all rights to withhold any portion of sums held in escrow, including any unpaid interest thereon, or to bring suit against the tenant for damages to the leasehold premises.

(c) If the landlord fails to pay the tenant the difference between the sum deposited, including any unpaid interest thereon, and the actual damages to the leasehold premises caused by the tenant within thirty days after termination of the lease or surrender and acceptance of the leasehold premises, the landlord shall be liable in assumpsit to double the amount by which the sum deposited in escrow, including any unpaid interest thereon, exceeds the actual damages to the leasehold premises caused by the tenant as determined by any court of record or court not of record having jurisdiction in civil actions at law. The burden of proof of actual damages caused by the tenant to the leasehold premises shall be on the landlord.

(d) Any attempted waiver of this section by a tenant by contract or otherwise shall be void and unenforceable.

(e) Failure of the tenant to provide the landlord with his new address in writing upon termination of the lease or upon surrender and acceptance of the leasehold premises shall relieve the landlord from any liability under this section.

(f) This section shall apply only to residential leaseholds and not to commercial leaseholds.

Section 250.513. Appeal by tenant to common pleas court

(a) Every tenant who files an appeal to a court of common pleas, of a judgment of the lower court involving an action under this act for the recovery of possession of real property or for rent due shall deposit with the prothonotary a sum equal to the amount of rent due as determined by the lower court. This sum representing the rent due or in question shall be placed in a special escrow account by the prothonotary. The prothonotary shall only dispose of these funds by order of court.

(b) Within ten days after the rendition of judgment by a lower court arising out of residential lease or within thirty days after a judgment by a lower court arising out of a nonresidential lease or a residential lease involving a victim of domestic violence, either party may appeal to the court of common pleas and the appeal by the tenant shall operate as a

supersedeas only if the tenant pays in cash or bond the amount of any judgment rendered by the lower court or is a victim of domestic violence and pays, in cash, any rent which becomes due during the court of common pleas proceedings within ten days after the date each payment is due into an escrow account with the prothonotary or the supersedeas shall be summarily terminated.

(c) Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal.

(d) Upon application by the tenant, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to directly compensate those providers of habitable services which the landlord is required to provide under law or under the lease.

(e) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Lower court." District justice, magistrate or any other court having jurisdiction over landlord and tenant matters, excluding a court of common pleas.

"Victim of domestic violence." A person who has obtained a protection from abuse order against another individual or can provide other suitable evidence as the court shall direct.

Section 250.501-A. Definitions

As used in this article, the following terms shall have the meanings ascribed to them in this section unless the context otherwise indicates:

(1) **"Tenement building"** any house or building, or portion thereof, which is intended or designed to be occupied or leased for occupation, or actually occupied, as a home or residence for three or more households living in separate apartments, and doing their cooking upon the premises.

(2) **"Apartment"** a room or suite of two or more rooms, occupied or leased for occupation, or intended or designed to be occupied, as a domicile.

(3) **"Multiple dwelling premises"** any area occupied by dwelling units, appurtenances thereto, grounds and facilities which dwelling units are intended or designed to be occupied or leased for occupation, or actually occupied, as individual homes or

residences for three or more households. "Multiple dwelling premises" shall include, inter alia, mobile home parks.

Section 250.502-A. Landlord's duties

The retention of control of the stairways, passages, roadways and other common facilities of a tenement building or multiple dwelling premises places upon the landlord, or other possessor, the duty of reasonable care for safety in use. This responsibility of the landlord extends not alone to the individual tenant, but also to his family, servants and employees, business visitors, social guests, and the like. Those who enter in the right of the tenant, even though under his mere license, make a permissible use of the premises for which the common ways and facilities are provided.

Section 250.503-A. Tenant's duties

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

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

(2) Not permit any person on the premises with his permission to wilfully or wantonly disturb the peaceful enjoyment of the premises by other tenants and neighbors.

Section 250.504-A. Tenant's rights

The tenant shall have a right to invite to his apartment or dwelling unit such employees, business visitors, tradesmen, deliverymen, suppliers of goods and services, and the like as he wishes so long as his obligations as a tenant under this article are observed. The tenant also shall have right to invite to his apartment or dwelling unit, for a reasonable period of time, such social guest, family or visitors as he wishes so long as his obligations as a tenant under this article are observed. These rights may not be waived by any provisions of a written rental agreement and the landlord and/or owner may not charge any fee, service charge or additional rent to the tenant for exercising his rights under this act.

It is the intent of this article to insure that the landlord may in no way restrict the tenant's right to purchase goods, services and the like from a source of the tenant's choosing and as a consequence any provision in a written agreement attempting to limit this right shall be void and unenforceable in the courts of this Commonwealth.

Section 250.505-A. Use of illegal drugs

(a) The following acts relating to illegal drugs shall be a breach of condition of the lease and shall be grounds for removal of the tenant from a single-family dwelling, apartment, multiple dwelling premises or tenement building:

(1) The first conviction for an illegal sale, manufacture or distribution of any drug in violation of the act of April 14, 1972 (P.L. 233, No. 64), known as the "The Controlled Substance, Drug, Device and Cosmetic Act,"[9] on a single-family dwelling or any portion of the multiple dwelling premises or tenement;

(2) The second violation of any of the provisions of "The Controlled Substance, Drug, Device and Cosmetic Act" on a single-family dwelling or any portion of the multiple dwelling premises or tenement;

(3) The seizure by law enforcement officials of any illegal drugs on the leased premises in the single-family dwelling or multiple dwelling premises or tenement.

(b) Failure to remove any tenant for violation of any of the provisions of subsection (a) shall not act as a waiver of the landlord's rights with regard to the same or any other tenant relating to any subsequent acts.

ARTICLE V-B. TENANTS' RIGHTS TO CABLE TELEVISION

Section 250.501-B. Definitions

As used in this article--

(1) **"CATV system"** or **"cable television system"** shall include a system or facility or part thereof which consists of a set of transmission paths and associated signal generation, reception, amplification and control equipment which is operated or intended to be operated to perform the service of receiving and amplifying and distributing and redistributing signals broadcast or transmitted by one or more television or radio stations or information distribution service companies, including, but not limited to, the cable communications system owner, operator or manager itself, to subscribers. The term shall include the service of distributing any video, audio, digital, light or audio-video signals whether broadcast or otherwise.

(2) **"Holding a franchise"** shall include obtaining municipal consent to or

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[9] 35 P.S. §780-101 et seq.

approval of the construction or operation of a CATV system and the rendering of CATV services whether granted by resolution, ordinance or written agreement. The term shall include a person who has constructed and is operating a CATV system within the public right-of-way of a municipality which, at the time of construction and initial operation of such CATV system, did not require that municipal consent be obtained.

(3) **"Landlord"** shall include an individual or entity owning, controlling, leasing, operating or managing multiple dwelling premises.

(4) **"Multiple dwelling premises"** shall include any area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be occupied or leased for occupation, or actually occupied, as individual homes or residences for three or more households. The term shall include mobile home parks.

(5) **"Operator"** shall include the operator of a CATV system holding a franchise granted by the municipality or municipalities in which the multiple dwelling premises to be served is located.

Section 250.502-B. Tenants protected

A landlord may not discriminate in rental or other charges between tenants who subscribe to the services of a CATV system and those who do not. The landlord may, however, require reasonable compensation in exchange for a permanent taking of his property resulting from the installation of CATV system facilities within and upon his multiple dwelling premises, to be paid by an operator. The compensation shall be determined in accordance with this article.

Section 250.503-B. Tenants' rights

The tenant has the right to request and receive CATV services from an operator or a landlord provided that there has been an agreement between a landlord and an operator through the negotiation process outlined in section 504-B[10] or through a ruling of an arbitrator as provided for in this article. A landlord may not prohibit or otherwise prevent a tenant from requesting or acquiring CATV services from an operator of the tenant's choice provided that there has been an agreement between a landlord and an operator through the negotiation process outlined in section 504-B or through a ruling of an arbitrator as provided for in this article. A landlord may not prevent an operator from entering such premises for the purposes of constructing, reconstructing, installing, servicing or repairing CATV system facilities or maintaining CATV services if a tenant of a multiple dwelling premises has requested such CATV services and if the operator complies with this article. The operator shall retain

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[10] 68 P.S. §250-504-B.

ownership of all wiring and equipment used in any installation or upgrade of a CATV system in multiple dwelling premises. An operator shall not provide CATV service to an individual dwelling unit unless permission has been given by or received from the tenant occupying the unit.

Section 250.504-B. Right to render services; notice

If a tenant of a multiple dwelling premises requests an operator to provide CATV services and if the operator decides that it will provide such services, the operator shall so notify the landlord in writing within ten days after the operator decides to provide such service. If the operator fails to provide such notice, then the tenant's request shall be terminated. If the operator agrees to provide said CATV services, then a forty-five day period of negotiation between the landlord and the operator shall be commenced. This original notice shall state as follows: "The landlord, tenants and operators have rights granted under Article V-B of the act of April 6, 1951 (P.L. 69, No. 20), known as 'The Landlord and Tenant Act of 1951'."[11] The original notice shall be accompanied by a proposal outlining the nature of the work to be performed and including an offer of compensation for loss in value of property given in exchange for the permanent installation of CATV system facilities. The proposal also shall include a statement that the operator is liable to the landlord for any physical damage, shall set forth the means by which the operator will comply with the installation requirements of the landlord pursuant to section 505-B[12] and shall state the time period for installation and security to be provided. The landlord may waive his right to security at any time in the negotiation process.

During the forty-five day period, the landlord and the operator will attempt to reach an agreement concerning the terms upon which CATV services shall be provided. If, within the forty-five day period or at any time thereafter, the proposal results in an agreement between the landlord and the operator, CATV services shall be provided in accordance with the agreement. If, at the end of the forty-five day period, the proposal does not result in an agreement between the landlord and the operator, then this article shall apply. The right of a tenant to receive CATV service from an operator of his choice may not be delayed beyond the forty-five day period contained in the original notice or otherwise impaired unless the matter proceeds to arbitration or court as provided in this article. An operator may bring a civil action to enforce the right of CATV services installation given under this article.

Section 250.505-B. Compensation for physical damage

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[11] 68 P.S. §250.101 et seq.

[12] 68 P.S. §250.505-B.

An operator shall be liable to the landlord for any physical damage caused by the installation, operation or removal of CATV system facilities. A landlord may require that the installation of cable television facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the premises and the convenience and well-being of tenants. A landlord may also require that the installation of cable television facilities conforms to reasonable requirements as to the location of main cable connections to the premises, the routing of cable lines through the premises and the overall appearance of the finished installation. To the extent possible, the location of the entry of a main cable connection to the premises shall be made at the same location as the entry into the premises of public utility connections. A second or subsequent installation of cable television facilities, if any, shall conform to such reasonable requirements in such a way as to minimize further physical intrusion to or through the premises.

Section 250.506-B. Compensation for loss of value

(a) A landlord shall be entitled to just compensation from the operator resulting from loss in value of property resulting from the permanent installation of CATV system facilities on the premises.

(b) If a landlord believes that the loss in value of the property exceeds the compensation contained in the proposal accompanying the original notice or believes that the terms involving the work to be performed contained in the proposal are unreasonable, or both, the issue of just compensation or reasonableness of terms shall be determined in accordance with the following procedure:

(1) At any time prior to the end of the forty-five day period from the date when the landlord receives the original notice that the operator intends to construct or install a CATV system facility in multiple dwelling premises, the landlord shall serve upon the operator written notice that the landlord demands a greater amount of compensation or believes that the terms involving the work to be performed are unreasonable.

(2) If the operator is dissatisfied with the result of the negotiations at the conclusion of the forty-five day negotiation period, than he shall notify the landlord of the terms which the operator believes to be unreasonable and shall accompany this notice with a formal request for arbitration.

(3) Arbitration proceedings shall be conducted in accordance with the procedures of the American Arbitration Association or any successor thereto. The proceedings shall be held in the country in which multiple dwelling premises or part thereof are located. Requirements of this act relating to time, presumptions and compensation for loss of value shall apply in the proceedings. The cost of the proceedings shall be share equally by the landlord and the operator. The arbitration proceedings, once commenced, shall be

concluded and a written decision by the arbitrator shall be rendered within fourteen days of commencement. Judgment upon any award may be entered in any court having jurisdiction.

(4) Within thirty days of the date of the notice of the decision of the arbitrators, either party may appeal the decision of the arbitrators in a court of common pleas, regarding the amount awarded as compensation for loss of value or for physical damages to the property. During the pendency of an appeal, the operator may not enter the multiple dwelling premises to provide CATV services, except to those units that have existing CATV services. The court shall order each party to pay one-half of the arbitration costs.

(c) In determining reasonable compensation, evidence that a landlord has a specific alternative use for the space occupied or to be occupied by CATV system facilities, the loss of which will result in a monetary loss to the owner, or that installation of the CATV system facilities upon such multiple dwelling premises will otherwise substantially interfere with the use and occupancy of such premises to an extent which causes a decrease in the resale or rental value thereof shall be considered. In determining the damages to any landlord in an action under this section, compensation shall be measured by the loss in value of the landlord's property. An amount representing increase in value of the property occurring by reason of the installation of CATV system facilities shall be deducted from the compensation.

(d) The time periods set forth in this section may be extended by mutual agreement between the landlord and the operator.

Section 250.507-B. Venue

The court of common pleases of the county in which the multiple dwelling premises of part thereof is located shall have venue of all actions to enforce the provisions of this article or to hear any appeal from the award of arbitrators or any dispute between the parties.

Section 250.508-B. Alternative service

Nothing in this act shall preclude a landlord from offering alternative CATV services to tenants provided that the provisions of this article are not violated.

Section 250.509-B. Compliance with requirements for historical buildings

The operator shall comply with all Federal, State or local statutes, rules, regulations or ordinances with respect to buildings located in historical districts.

Section 250.510-B. Existing CATV services protected

CATV services being provided to tenants in multiple dwelling premises on the

effective date of this act may not be prohibited or otherwise prevented so long as the tenant in an individual dwelling unit continues to request such services.

ARTICLE VI. REPEALS

Section 250.601. Specific repeals

The following acts and parts of acts are hereby repealed as respectively indicated: Citing Specific Laws.

Section 250.602. General repeal

All other acts and parts of acts, general, local and special, inconsistent with or supplied by this act, are hereby repealed. It is intended that this act shall furnish a complete and exclusive system in itself.

Supreme Court of Pennsylvania.
J. C. **PUGH**, Appellant,
v.
Eloise P. **HOLMES**, Appellee.

Argued April 19, 1979.
Decided July 6, 1979.
Reargument Denied Aug. 15, 1979.

Landlord brought suit against tenant for possession and unpaid rent. The tenant filed answers asserting that the landlord had breached an implied warranty of habitability and also claimed a setoff for amounts spent to repair a broken lock. The Court of Common Pleas, Franklin County, sustained the landlord's demurrer and entered judgments in the landlord's favor. The tenant appealed, and the Superior Court, Jacobs, President Judge, No. 367 March Term 1977, 253 Pa.Super. 76, 384 A.2d 1234, reversed and remanded. The landlord's petition for allowance of appeal was granted, and the Supreme Court, No. 32 May Term 1978, Larsen, J., held that: (1) the doctrine of caveat emptor was abolished with respect to residential leases; (2) an implied warranty of habitability was applicable to all residential leases; (3) the tenant's allegations of ten specific defective conditions, if proven on remand, could justify a finding by the trier of fact that the implied warranty of habitability was breached; (4) remedies available upon a breach of the implied warranty of habitability were delineated; and (5) the percentage reduction in use method was to be employed to determine the amount by which the obligation to pay rent is abated by a breach of the warranty of habitability.

Order of the Superior Court affirmed as modified and matter remanded.

Roberts, J., concurred in part and filed opinion in which Nix and Manderino, JJ., joined.

West Headnotes

[1] Landlord and Tenant 233 24(1)

233 Landlord and Tenant
233II Leases and Agreements in General
233II(A) Requisites and Validity
233k24 Form and Contents of Lease and Validity in General
233k24(1) k. In general. Most Cited Cases

The doctrine of caveat emptor is no longer applicable to residential leases.

[2] Landlord and Tenant 233 125(1)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(A) Description, Extent, and Condition
233k125 Tenantable Condition of Premises
233k125(1) k. In general. Most Cited Cases

All residential leases contain an implied warranty of habitability.

[3] Landlord and Tenant 233 20

233 Landlord and Tenant
233II Leases and Agreements in General
233II(A) Requisites and Validity
233k20 k. Nature of the contract. Most Cited Cases

Landlord and Tenant 233 37

233 Landlord and Tenant
233II Leases and Agreements in General
233II(B) Construction and Operation
233k37 k. Application of general rules of construction. Most Cited Cases

A lease is in the nature of a contract and is controlled by principles of contract law.

[4] Landlord and Tenant 233 187(1)

233 Landlord and Tenant
233VIII Rent and Advances

233VIII(A) Rights and Liabilities
233k187 Untenantable Condition of Premises
233k187(1) k. In general. Most Cited Cases

The covenants and warranties in a lease are mutually dependent; therefore, the tenant's obligation to pay rent and the landlord's obligation under the implied warranty of habitability to provide and maintain habitable premises are dependent and a material breach of one of these obligations will relieve the obligation of the other so long as the breach continues.

[5] Landlord and Tenant 233 ⚿187(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k187 Untenantable Condition of Premises
233k187(1) k. In general. Most Cited Cases

Fact that the legislature had acted in the field by enacting the Rent Withholding Act did not preclude courts from further development of common-law solutions to landlord-tenant habitability problems. 35 P.S. § 1700–1.

[6] Landlord and Tenant 233 ⚿187(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k187 Untenantable Condition of Premises
233k187(1) k. In general. Most Cited Cases

The Rent Withholding Act does not purport to be the exclusive tenant remedy for unsavory housing, nor does it attempt to replace or alter certain limited and already existing tenant remedies such as constructive eviction. 35 P.S. § 1700–1.

[7] Landlord and Tenant 233 ⚿172(1)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(F) Eviction
233k172 Act or Omission of Landlord
233k172(1) k. In general. Most Cited Cases

Fact that the Rent Withholding Act was silent as to constructive eviction was not sufficient to permit interpretation of the Act as a legislative abolition of that doctrine. 35 P.S. § 1700–1.

[8] Courts 106 ⚿89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases

Courts have a duty to reappraise old doctrines in the light of the facts and values of contemporary life, particularly old common-law doctrines which the courts themselves created and developed.

[9] Courts 106 ⚿89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases

When a judicially created rule has been duly tested by experience and found inconsistent with the sense of justice or social welfare, courts should not hesitate to abandon the rule.

[10] Statutes 361 ⚿223.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.1 k. In general. Most Cited Cases

In reappraising antiquated laws, it is entirely proper to seek guidance from policies underlying

related legislation.

[11] Landlord and Tenant 233 187(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k187 Untenantable Condition of Premises
233k187(1) k. In general. Most Cited Cases

The purpose of the Rent Withholding Act is to restore substandard housing to a reasonable level of habitability as swiftly as possible and to deter landlords from allowing their property to so deteriorate that is is unfit for habitation. 35 P.S. § 1700–1.

[12] Landlord and Tenant 233 125(1)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(A) Description, Extent, and Condition
233k125 Tenantable Condition of Premises
233k125(1) k. In general. Most Cited Cases

The implied warranty of habitability with respect to residential leases is applicable both at the beginning of a lease and throughout its duration.

[13] Landlord and Tenant 233 125(2)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(A) Description, Extent, and Condition
233k125 Tenantable Condition of Premises
233k125(2) k. Suitability of premises for the purpose for which they were leased. Most Cited Cases

In order for there to be a breach of the implied warranty of habitability with respect to a residential lease, the defect must be of a nature and kind which will prevent the use of the dwelling for its intended purpose of habitation.

[14] Landlord and Tenant 233 125(1)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(A) Description, Extent, and Condition
233k125 Tenantable Condition of Premises
233k125(1) k. In general. Most Cited Cases

At a minimum, the implied warranty of habitability in a residential lease means that the premises must be safe and sanitary; however, there is no obligation on the part of the landlord to supply a perfect or aesthetically pleasing dwelling.

[15] Landlord and Tenant 233 125(1)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(A) Description, Extent, and Condition
233k125 Tenantable Condition of Premises
233k125(1) k. In general. Most Cited Cases

To establish a breach of the implied warranty of habitability, a tenant must prove that he or she gave notice to the landlord of the defect or condition, that the landlord had a reasonable opportunity to make the necessary repairs and that the landlord failed to do so.

[16] Landlord and Tenant 233 125(1)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(A) Description, Extent, and Condition
233k125 Tenantable Condition of Premises
233k125(1) k. In general. Most Cited Cases

Proof that local housing codes were violated is not necessary to establish a breach of the implied warranty of habitability.

[17] Landlord and Tenant 233 125(1)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(A) Description, Extent, and Condition
233k125 Tenantable Condition of Premises
233k125(1) k. In general. Most Cited Cases

If established, conditions including a leaky roof, lack of hot water, leaking toilet and pipes, cockroach infestation and hazardous floors and steps could justify a finding by the trier of fact that the warranty of habitability implied in a residential lease had been breached.

[18] Landlord and Tenant 233 195(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k195 Abandonment by Tenant
233k195(1) k. In general. Most Cited Cases

A tenant may vacate the premises when the landlord materially breaches the implied warranty of habitability and such surrender of possession by the tenant terminates his obligation to pay rent under the lease.

[19] Landlord and Tenant 233 187(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k187 Untenantable Condition of Premises
233k187(1) k. In general. Most Cited Cases

When a tenant remains in possession and the landlord sues for possession for unpaid rent, the implied warranty of habitability may be asserted as a defense.

[20] Landlord and Tenant 233 187(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k187 Untenantable Condition of Premises
233k187(1) k. In general. Most Cited Cases

If a landlord has totally breached the implied warranty of habitability, the tenant's obligation to pay rent is abated in full and any action by the landlord for possession for unpaid rent must fail.

[21] Landlord and Tenant 233 187(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k187 Untenantable Condition of Premises
233k187(1) k. In general. Most Cited Cases

A partial breach of the implied warranty of habitability abates the tenant's obligation to pay rent only in part and, in such a case, a judgment for possession must be denied if the tenant agrees to pay that portion of the rent not abated; however, if the tenant refuses to pay the partial rent that is due, a judgment granting possession may be ordered.

[22] Deposits in Court 123 1

123 Deposits in Court
123k1 k. Grounds for permitting or compelling deposit; condition of cause. Most Cited Cases

In a suit for possession for unpaid rent wherein the tenant asserts the implied warranty of habitability as a defense, the decision whether the tenant should deposit all or some of the unpaid rent into escrow lies in the sound discretion of the trial judge or magistrate.

[23] Deposits in Court 123 1

123 Deposits in Court
123k1 k. Grounds for permitting or compelling deposit; condition of cause. Most Cited Cases

When a landlord brings suit for possession for unpaid rent and the tenant asserts a breach of the implied warrant of habitability as a defense, the tenant may retain his rent, subject to the court's discretionary power to order him, after a hearing, to deposit all or some of the rent with the court or with a receiver appointed by the court.

[24] Deposits in Court 123 1

123 Deposits in Court

123k1 k. Grounds for permitting or compelling deposit; condition of cause. Most Cited Cases

Factors to be considered by the court in deciding whether to order a tenant to deposit all or some of the assertedly unpaid rent into escrow include the seriousness and duration of the alleged defects in the dwelling and the likelihood that the tenant will be able successfully to demonstrate that the landlord breached the implied warranty of habitability.

[25] Landlord and Tenant 233 188(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k188 Failure of Landlord to Repair or Improve
233k188(1) k. In general. Most Cited Cases

The "repair and deduct" remedy is appropriate for breaches of the implied warranty of habitability.

[26] Landlord and Tenant 233 188(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k188 Failure of Landlord to Repair or Improve
233k188(1) k. In general. Most Cited Cases

For purpose of rule that a tenant may, after "proper notice" to his landlord, deduct from rent reasonable costs incurred in eliminating the landlord's default, "proper notice" is notice that describes the default and specifies what steps will be taken by the tenant to correct it if the landlord has not eliminated the defective condition within a reasonable time.

[27] Landlord and Tenant 233 188(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k188 Failure of Landlord to Repair or Improve
233k188(1) k. In general. Most Cited Cases

The use by a tenant of the "repair and deduct" remedy is not unlimited; repairs must be reasonably priced and cannot exceed the amount of rent available to apply against the cost, i. e., the amount of rent owed for the term of the lease.

[28] Landlord and Tenant 233 188(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k188 Failure of Landlord to Repair or Improve
233k188(1) k. In general. Most Cited Cases

A tenant who uses the "repair and deduct" remedy to eliminate a landlord's default runs the risk of an adverse court finding on the necessity of the repairs; if the court finds that the repairs were not needed to render the premises habitable, the court must find the rent deduction unreasonable and, in such a case, the landlord could obtain a judgment for the amount of rent deducted.

[29] Landlord and Tenant 233 152(10)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(D) Repairs, Insurance, and Improvements
233k152 Covenants and Agreements as to Repairs and Alterations
233k152(10) k. Right of tenant to repair and recover cost. Most Cited Cases

A counterclaim for repairs to leased property can be utilized by a tenant to recover from already paid rent based for expenses incurred in making repairs of defective conditions when the landlord fails to repair within a reasonable time following proper notice.

[30] Landlord and Tenant 233 152(10)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(D) Repairs, Insurance, and Improvements

233k152 Covenants and Agreements as to Repairs and Alterations
233k152(10) k. Right of tenant to repair and recover cost. Most Cited Cases

When a tenant asserts a counterclaim for repairs to leased property, the tenant can recover on the counterclaim only if the cost of the repairs was reasonable and did not exceed the amount of rent owed for the term of the lease.

[31] Landlord and Tenant 233 ⚿152(10)

233 Landlord and Tenant
233VII Premises, and Enjoyment and Use Thereof
233VII(D) Repairs, Insurance, and Improvements
233k152 Covenants and Agreements as to Repairs and Alterations
233k152(10) k. Right of tenant to repair and recover cost. Most Cited Cases

A counterclaim for expenses incurred in repairing leased premises is not available when the tenant has not paid his rent for the period in which the repairs were made and the cost of the repairs did not exceed the rent owed for that period; in that case, there are no damages as the tenant has already been compensated for the cost of repairs by not paying rent.

[32] Specific Performance 358 ⚿62

358 Specific Performance
358II Contracts Enforceable
358k62 k. Subject-matter of contracts in general. Most Cited Cases

Since a lease is a contract, traditional contract remedies such as specific performance are available to enforce the implied warranty of habitability.

[33] Specific Performance 358 ⚿1

358 Specific Performance
358I Nature and Grounds of Remedy in General
358k1 k. Nature and purpose in general. Most Cited Cases

With respect to leases as well as other contracts specific performance is an equitable remedy not available as a matter of course but only in unique situations.

[34] Landlord and Tenant 233 ⚿187(1)

233 Landlord and Tenant
233VIII Rent and Advances
233VIII(A) Rights and Liabilities
233k187 Untenantable Condition of Premises
233k187(1) k. In general. Most Cited Cases

When a tenant establishes a breach of the implied warranty of habitability by the landlord as a defense or counterclaim in a landlord's action for unpaid rent, the percentage reduction in use method is to be used to determine the amount by which the tenant's obligation to pay rent is abated; therefore, until the dwelling is returned to a habitable state, the past and future monthly rent may be reduced by a percentage equal to the percentage by which the use of the premises has been decreased by the breach of warranty.

[35] Damages 115 ⚿6

115 Damages
115I Nature and Grounds in General
115k6 k. Certainty as to amount or extent of damage. Most Cited Cases

Mere uncertainty as to the amount of damages will not bar recovery where it is clear that damages were the certain result of the defendant's conduct.

****900 *278** Stephen E. Patterson, Waynesboro, for appellant.

David R. Woodward, Chambersburg, for appellee.

Before EAGEN, C. J., and O'BRIEN, ROBERTS, NIX, MANDERINO and LARSEN, JJ.

OPINION

LARSEN, Justice.

Eloise Holmes, appellee, had been, pursuant to an oral month-to-month lease, renting a residential dwelling in Chambersburg in Franklin County at the rate of $60.00 per month from November, 1971 until recently. Her landlord, appellant J. C. Pugh, instituted

two separate landlord-tenant actions against appellee before a justice of the peace, the first resulting in a judgment for unpaid rent (for the period from September, 1975 through June, 1976) and the second resulting in a judgment for unpaid rent (for the period from June, 1976 through August, 1976) and for possession of the premises. Following Mrs. Holmes' appeals to the Court of Common Pleas of Franklin County, appellant filed separate complaints, the first seeking unpaid rent and the second ***279** seeking both unpaid rent and possession. In both actions, appellee filed answers asserting a defense of the landlord's alleged breach of an implied warranty of habitability. Additionally, in the second action, appellee asserted a setoff due in an amount which she claimed she had spent to repair a broken lock after having given appellant notice and a reasonable opportunity to repair the lock. Appellee also filed a counterclaim for the cost of repairing other allegedly defective conditions of which she had given appellant notice. Appellant filed preliminary objections to the answer and counterclaim which the Court of Common Pleas sustained finding that appellee's answer failed to set forth a legal defense to the landlord's actions, and that the counterclaim failed to set forth a legal cause of action.

On appeal, the Superior Court, by opinion of President Judge Jacobs, reversed and remanded. The Superior Court abolished the doctrine of Caveat emptor as applied to residential leases and held that a warranty of habitability by the landlord will be implied in all such leases, which implied warrant would be mutually dependent upon the tenant's obligation to pay rent. **Pugh** v. **Holmes**, 253 Pa.Super. 76, 384 A.2d 1234 (1978) (Price, J. dissenting). By order dated July 20, 1978, this Court granted appellant's petition for allowance of appeal.

I. DOCTRINE OF CAVEAT EMPTOR ABOLISHED/IMPLIED WARRANTY OF HABITABILITY ADOPTED

ADOPTED

[1][2] The doctrine of Caveat emptor comported with the needs of the society in which it developed. However, we find that the doctrine of Caveat emptor has outlived its usefulness and must be abolished, and that, in order to keep in step with the realities of modern day leasing, it is appropriate to adopt an implied warranty of habitability in residential leases. The rule of Caveat emptor, as applied to landlord-tenant relationships, developed in England in the sixteenth century and was adopted in the nineteenth century as the law of this Commonwealth in Moore v. Weber, 71 Pa. 429 (1872). Moore held "The rule here, as in ****901** other cases, is Caveat emptor. The lessee's eyes are his bargain. He is ***280** bound to examine the premises he rents, and secure himself by covenants to repair." Id. at 432. In the primarily agrarian society in which the doctrine developed, the law viewed the lease transaction as a conveyance of land for a term, and the focal interest in the conveyance was the land any shelters or structures existing on the land were "incidental" concerns. The rent was viewed as "coming out of the land" itself, not from the dwelling or the dweller. The feudal landlord

> "had no obligations to the tenant other than those made expressly, and the tenant's obligation to pay rent was independent of the landlord's (covenants) . . . The doctrine of Caveat emptor was fully applicable. The tenant's only protections were to inspect the premises before taking possession or to extract express warranties from the landlord. It was assumed that landlords and tenants held equal bargaining power in arranging their rental agreements, and that the agrarian tenant had the ability to inspect the dwelling adequately and to make simple repairs in the buildings which possessed no modern conveniences such as indoor plumbing or electrical wiring.
>
> As agrarian society declined and population centers shifted from rural to urban areas, the common law concepts of landlord-tenant relationships did not change. Despite the facts that the primary purpose of the urban leasing arrangement was housing and not land and that the tenant could neither adequately inspect nor repair urban dwelling units, landlords still were not held to any implied warranties in the places they rented and tenants leased dwellings at their own risk."
>
> **Pugh** v. **Holmes**, 384 A.2d at 1237-38.[FN1]
>
> FN1. For judicial analysis of the historical context in which the property view of the landlord-tenant relationship developed, See cases cited in **Pugh** v. **Holmes**, 384 A.2d at 1237, n. 2. See also 2 F. Pollock and F. Maitland, The History of English Law 131

(2d ed. 1923); 2 R. Powell, The Law of Real Property s 225(2) (P. Rohan rev. 1975); Restatement (Second) of Property, Landlord and Tenant s 5.1, Reporter's Note 2.

As stated by appellee, "times have changed. So has the law." (Brief for appellee at 3). Today, the doctrine of the *281 implied warranty of habitability has attained majority status in the United States, the doctrine having been embraced by the appellate courts and/or the legislatures of some 40 state jurisdictions and the District of Columbia.[FN2] The warranty*282 recognizes **902 that the modern tenant is not interested in land, but rather bargains for a dwelling house suitable for habitation.

FN2. Alaska Alaska Stat. ss 34.03.100, 34.03.160, 34.03.180 (1974); Arizona Ariz.Rev.Stat.Ann. ss 33-1324 and 33-1361 (1974); California Cal.Civ.Code ss 1941, 1942 (West 1974), and Green v. Superior Court, 10 Cal.3d 616, 111 Cal.Rptr. 704, 517 P.2d 1168 (1974); Connecticut Conn.Gen.Stat.Ann. ss 47-24 Et seq. (1960), and Todd v. May, 6 Conn.Cir.Ct. 731, 316 A.2d 793 (1973); Delaware Del.Code Ann. tit. 25, s 5303 (1974); District of Columbia Javins v. First National Realty Corp., 138 U.S.App.D.C. 369, 380, 428 F.2d 1071, 1082 Cert. denied, 400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 (1970); Florida Fla.Stat.Ann. ss 83.51, 83.56 (1973); Georgia Ga.Code Ann. tit. 61, Sections 111-112; Givens v. Gray, 126 Ga.App. 309, 190 S.E.2d 607 (1972); and Stack v. Harris, 111 Ga. 149, 36 S.E. 615 (1906); Hawaii Haw.Rev.Stat. s 521-42 (Supp.1974), and Lemle v. Breeden, 51 Haw. 426, 462 P.2d 470 (1969); Idaho Idaho Code s 6-316 (H.B. No. 34, 1977); Illinois Jack Spring Inc. v. Little, 50 Ill.2d 351, 280 N.E.2d 208 (1972); Indiana Old Town Development Company v. Langford, Ind.App., 349 N.E.2d 744 (1976); Iowa Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); Kansas Steele v. Latimer, 214 Kan. 329, 521 P.2d 304 (1974); Kentucky Ky.Rev.Stat.Ann. ss 383.595, 383.625 (Supp.1974); Maine Me.Rev.Stat.Ann. tit. 14, s 6021 (Supp.1974); Maryland Md.Real Prop.Code Ann. s 8-211 (Cum.Supp.1975), superseded in their respective jurisdictions by Baltimore City Public Local laws ss 9-9, 9-10, 9-14.1 (eff. July 1, 1971), and Montgomery County Code, Fair Landlord-Tenant Relations, ch. 93A (Nov. 21, 1972); Massachusetts Mass.Gen.Laws Ann. ch. 239, s 8A (Supp.1974), and Boston Housing Authority v. Hemingway, 363 Mass. 184, 293 N.E.2d 831 (1973); Michigan Mich.Comp.Laws Ann. s 554.139 (Supp.1974), and Rome v. Walker, 38 Mich.App. 458, 196 N.W.2d 850 (1972); Minnesota Minn.Stat. s 504.18 (1974), Applied in Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973); Missouri King v. Moorehead, 495 S.W.2d 65 (Mo.App.1973); Montana Mont.Rev.Codes s 42-420 (1978); Nebraska Neb.Rev.Stat. ss 76-1419, 76-1425 Et seq. (Cum.Supp.1974); Nevada Nev.Rev.Stat. tit. 10 s 118A.290 (1977) (but note that the Act does Not protect tenants whose landlord owns fewer than seven units); New Hampshire Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); New Jersey Marini v. Ireland; 56 N.J. 130, 265 A.2d 526 (1970); New Mexico N.M.Stat. ss 70-7-1 Et seq.; New York Amanuensis, Ltd. v. Brown, 65 Misc.2d 15, 318 N.Y.S.2d 11 (N.Y.Cir.Ct.1971); N.Y. Real Prop. Law s 235-b (McKinney 1972), As adopted in ch. 597, (1975) N.Y. Acts 875; North Carolina ch. 770, Session Laws, 1977-78 (N.C.G.S., ch. 42, art. V); North Dakota N.D.Cent.Code s 47-16-13.1 Et seq. (1977); Ohio Glyco v. Schultz, 35 Ohio Misc.2d 25, 62 Ohio Op.2d 459, 289 N.E.2d 919 (Mun.Ct.Ohio 1972), and Ohio Rev.Code Ann. ss 5321.04, 5321.07 (Page Supp.1974); Oklahoma Okla.Stat. tit. 41 s 118 (1978); Oregon Or.Rev.Stat. ss 91.770, 91.800-.815 (1974); Rhode Island R.I.Gen.Laws s 34-18-16 (1968); Tennessee Tenn.Code Ann. ss 64-2801 Et seq. (1974); Texas Kamarath v. Bennett, (Tex.1978), 568 S.W.2d 658 (1978); Vermont Vt.Stat.Ann. tit. 12, s 4859 (1972) (remedy limited to affirmative defenses only); Virginia Va.Code Ann. ss 55-248.13, 55-248.25 (Cum.Supp.1975); Washington Wash.Rev.Code Ann. s 59.18.060 (Supp.1974), and Foisy v. Wyman, 83 Wash.2d 22, 515 P.2d 160 (1973); West Virginia H.B. 1368 (passed March 11, 1978; effective date, June 11, 1978) (sets out landlord obligations but does not provide

remedy for breach); Wisconsin Pines v. Perssion, 14 Wis.2d 590, 111 N.W.2d 409 (1961); But see Posnanski v. Hood, 46 Wis.2d 172, 174 N.W.2d 528 (1970) and Blackwell v. Del Bosco, Colo., 558 P.2d 563 (1976). Brief for Amicus Curiae, National Housing Law Project, 1-2, n. 1.

"Functionally viewed, the modern apartment dweller is a consumer of housing services. The contemporary leasing of residences envisions one person (landlord) exchanging for periodic payments (rent) a bundle of goods and services, rights and obligations. The now classic description of this economic reality appears in Javins v. First National Realty Corp., 138 U.S.App.D.C. 369, 428 F.2d 1071, 1074, Cert. denied, 400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 (1970) (footnote omitted). When American city dwellers both rich and poor, seek 'shelter today, they seek a well known package of goods and services a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.' "
Commonwealth v. Monumental Properties, Inc., 459 Pa. 450, 467-68, 329 A.2d 812, 820-21 (1974) (holding Unfair Trade Practices and Consumer Protection Law applicable to residential leases.)

Moreover, prospective tenants today can have vastly inferior bargaining power compared with the landlord, as was recognized in Reitmeyer v. Sprecher, 431 Pa. 284, 243 A.2d 395 (1968). In Reitmeyer this Court stated:

***283** "Stark necessity very often forces a tenant into occupancy of premises far from desirable and in a defective state of repair. The acute housing shortage mandates that the average prospective tenant accede to the demands of the prospective landlord as to conditions of rental, which, under ordinary conditions with housing available, the average tenant would not and should not accept.

No longer does the average prospective tenant occupy a free bargaining status and no longer do the average landlord-to-be and tenant-to-be negotiate a lease on an 'arm's length' basis."

Id. at 289-90, 243 A.2d at 398.

The Superior Court correctly observed that to join the trend toward an implied warranty of habitability would not be a complete and sudden break with the past, but would be the "next step in the law which has been developing in the Commonwealth for a number of years." 384 A.2d at 1239. Pennsylvania courts have held that a tenant's obligation to pay rent was mutually dependent on Express covenants of a landlord to repair and that a material breach of the landlord's covenant to repair relieved a tenant from his obligation to pay rent. McDanel v. Mack Realty Company, 315 Pa. 174, 172 A. 97 (1934). In Reitmeyer v. Sprecher, supra, recognizing the contractual nature of modern leasing and the severe housing shortage resulting in unequal bargaining power, this Court adopted s 357 of the Restatement (Second) of Torts and imposed liability on a landlord who had breached a covenant to repair a dangerous ****903** condition on the premises, which breach resulted in injury to the tenant. In Elderkin v. Gaster, 447 Pa. 118, 288 A.2d 771 (1972), we abolished Caveat emptor and adopted an implied warranty of habitability in sales of new homes to buyers by vendors/builders. In Elderkin we noted "caveat emptor developed when the buyer and seller were in an equal bargaining position and they could readily be expected to protect themselves in the deed. . . . 'The Caveat emptor rule as applied to new houses is an anachronism patently out of harmony with modern home buying practices.' " Id. at 127-28, 288 A.2d at 776 (citations omitted).

***284** In 1974, Commonwealth v. Monumental Properties, Inc., supra, we held the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, ss 1-9, 73 P.S. ss 201-1 to 201-9 (1971), applicable to residential leases, primarily because of the functional, contractual view of modern leasing and the housing crises in the Commonwealth. Id. at 467, 474-77, 824, 329 A.2d at 820-21, 824. The inferior bargaining position of some tenants caused by the housing shortage made the protection of these consumer laws necessary. Similarly, consumers of goods have received the protections of the implied warranties of merchantability and fitness for a particular purpose since 1953. Uniform Commercial Code, Act of April 6, 1953 P.L. 3, ss 2-314, 2-315, As reenacted, Act of October 2, 1959, P.L. 1023, s 2, 12A P.S. ss 2-314, 2-315 (1970).

More recently we held that a lessee of commercial

property is relieved from the obligation to pay rent when the leased premises are destroyed by fire. Albert M. Greenfield & Co., Inc. v. Kolea, 475 Pa. 351, 380 A.2d 758 (1977). This Court stated "In reaching a decision involving the landlord-tenant relationship, too often courts have relied on outdated common law property principles and presumptions and have refused to consider the factors necessary for an equitable and just conclusion. . . . Buildings are critical to the functioning of modern society. When the parties bargain for the use of a building, the soil beneath is generally of little consequence. Our laws should develop to reflect these changes." Id. at 356-57, 380 A.2d at 760.

[3][4] Given the foregoing considerations and authority, we affirm the Superior Court's holding that a lease is in the nature of a contract and is to be controlled by principles of contract law. The covenants and warranties in the lease are mutually dependent; the tenant's obligation to pay rent and the landlord's obligation imposed by the implied warranty of habitability to provide and maintain habitable premises are, therefore, dependent and a material breach of one of these obligations will relieve the obligation of the other so long as the breach continues.

*285 II. ADOPTION OF IMPLIED WARRANTY OF HABITABILITY: A PROPER JUDICIAL FUNCTIOn

[5] Appellant does not argue that an implied warranty of habitability does not comport with current understanding of the landlord-tenant relationship. In light of the overwhelming authority in favor of the warrant, he would be hard pressed to do so. Rather, the thrust of appellant's argument is that the establishment of an implied warranty of habitability is the setting of social policy, which is a function of the legislature. Specifically, appellant maintains that, because the legislature has acted in the field via the Rent Withholding Act, Act of January 24, 1966, P.L. 1534, As amended, 35 P.S. s 1700-1 (1977), the courts are prohibited from further development of common law solutions to landlord-tenant/habitability problems. We cannot accept this position.

The Rent Withholding Act (hereinafter the Act) provides:

> "Notwithstanding any other provision of law, or of any agreement, whether oral or in writing, whenever the Department of Licenses and Inspections of any city of the first class, or the Department of Public Safety of any city of the second class, second class A, or third class as the case may be, or any Public Health Department of any such city, or of the county in **904 which such city is located, certifies a dwelling as unfit for human habitation, the duty of any tenant of such dwelling to pay, and the right of the landlord to collect rent shall be suspended without affecting any other terms or conditions of the landlord-tenant relationship, until the dwelling is certified as fit for human habitation or until the tenancy is terminated for any reason other than nonpayment of rent. During any period when the duty to pay rent is suspended, and the tenant continues to occupy the dwelling, the rent withheld shall be deposited by the tenant in an escrow account in a bank or trust company approved by the city or county as the case may be and shall be paid to the landlord when the dwelling is certified as fit for human habitation at any time within six months from the date on which the *286 dwelling was certified as unfit for human habitation. If, at the end of six months after the certification of a dwelling as unfit for human habitation, such dwelling has not been certified as fit for human habitation, any moneys deposited in escrow on account of continued occupancy shall be payable to the depositor, except that any funds deposited in escrow may be used, for the purpose of making such dwelling fit for human habitation and for the payment of utility services for which the landlord is obligated but which he refuses or is unable to pay. No tenant shall be evicted for any reason whatsoever while rent is deposited in escrow."

Initially we note the Act is applicable only to cities of the first three classes and so is, by its terms, not applicable to the case at bar. Nevertheless, we must consider appellant's contention that, by acting At all, the legislature has precluded the judiciary from common law development in the landlord-tenant/habitability area.

[6][7] The Act does not purport to be the exclusive tenant remedy for unsavory housing, nor does it attempt to replace or alter certain limited and already existing tenant remedies such as constructive eviction. Kelly v. Miller, 249 Pa. 314, 94 A. 1055 (1915). The Act's silence as to constructive eviction could not be construed, without more, as a legislative abolition of

that doctrine. Neither can mere enactment of the Rent Withholding Act signal a legislative intent to remove from the courts the authority to fashion new remedies where appropriate in the landlord-tenant field.

[8][9] Caveat emptor was a creature of the common law. Elderkin v. Gastner, supra at 123, 288 A.2d at 774. Courts have a duty "to reappraise old doctrines in the light of the facts and values of contemporary life particularly old common law doctrines which the courts themselves have created and developed." Javins v. First National Realty Corp., supra 138 U.S.App.D.C. at 372, 373, 428 F.2d, 1074 at 1074, quoted in Albert M. Greenfield & Co., Inc. v. Kolea, supra at 357, 380 A.2d at 760. And when a rule has been ***287** duly tested by experience and found inconsistent with the sense of justice or the social welfare there should be little hesitation in "frank avowal and full abandonment." Cardozo, The Nature of the Judicial Process, 150-51 (1921), cited in Griffith v. United Airlines, Inc., 416 Pa. 1, 23, 203 A.2d 796, 806 (1964). We have followed these principles recently in several decisions which are clearly founded on a realization of, and adaption of the law to correspond to, changing social policy. Ayala v. Philadelphia Board of Education, 453 Pa. 584, 305 A.2d 877 (1973) (governmental immunity abolished) and Flagiello v. Pennsylvania Hospital, 417 Pa. 486, 208 A.2d 193 (1965) (immunity for charitable institutions abolished).

[10][11] In reappraising antiquated laws, it is entirely proper to seek guidance from policies underlying related legislation.

> "(c)ourts, in assessing the continued vitality of precedents, rules and doctrines of the past, may give weight to the policies reflected in more recent, widespread legislation, though the statutes do not apply treating the total body of the statutory law in the manner endorsed long ago by Mr. Justice Stone 'as both a declaration and a source of law, and as premise for legal reasoning' (The ****905**Common Law in the United States, 50 Harv.L.Rev. 4, 13 (1976))." Introduction to Restatement (Second) of Property, Landlord and Tenant.

The purpose of the Act is to restore substandard housing to a reasonable level of habitability as swiftly as possible and to deter landlords from allowing their property to deteriorate into a condition unfit for habitation. Newland v. Newland, 26 Pa.Cmwlth. 519, 364 A.2d 988 (1976) and Palmer v. Allegheny County Health Department, 21 Pa.Cmwlth. 246, 345 A.2d 317 (1975). The adoption of the implied warranty of habitability is consistent with this policy.

Appellate courts of other jurisdictions have considered and rejected the argument that a state's rent withholding act or other statutory remedies precluded judicial adoption of the implied warranty of habitability. In ***288**Boston Housing Authority v. Hemingway, 363 Mass. 184, 293 N.E.2d 831 (1973), the Massachusetts Supreme Court reviewed the overwhelming support from other jurisdictions which have judicially sanctioned the implied warranty and stated "All of these decisions are predicated on the implied assumption that remedial legislation designed to promote safe and sanitary housing does not preclude the courts from fashioning new common law rights and remedies to facilitate the policy of safe and sanitary housing embodied in the withholding statutes." Id. at 293 N.E.2d 841. That court further reasoned that failure to adopt the warranty of habitability would render that state's statutory law and common law conceptually and functionally inconsistent. See also, Green v. Superior Court, 10 Cal.3d 616, 111 Cal.Rptr. 704, 517 P.2d 1168 (1974) (state statute authorizing tenants to repair defective conditions and deduct expenses from rent held not exclusive remedy and not preclusive of judicial adoption of common law implied warranty of habitability) and Jack Springs, Inc. v. Little, 50 Ill.2d 351, 280 N.E.2d 208 (1972) (rent withholding statute not exclusive remedy and not preclusive of judicial adoption of common law implied warranty of habitability); Cf. Blackwell v. Del Bosco, Colo., 558 P.2d 563 (1976) (lone appellate decision deferring adoption of implied warranty of habitability to legislature, although not predicated on existing statutory tenant rights and remedies). We conclude, therefore, that the Rent Withholding Act is not the exclusive tenant remedy for a landlord's failure to maintain the leased premises in a habitable state nor does it preclude judicial development of common law landlord and tenant obligations, rights and remedies. To the contrary, the Act supports the adoption of the implied warranty of habitability.

III. BREACH OF THE IMPLIED WARRANTY OF HABITABILITY

Appellant also asserts that the Superior Court erred by failing to establish definite standards by

which habitability can be measured and breach of the warranty ascertained. We disagree the parameters of the warranty were adequately defined by the Superior Court.

[12] ***289** "The implied warranty is designed to insure that a landlord will provide facilities and services vital to the life, health, and safety of the tenant and to the use of the premises for residential purposes. King v. Moorehead, at 495 S.W.2d 75." **Pugh v. Holmes**, 384 A.2d at 1240. This warranty is applicable both at the beginning of the lease and throughout its duration. Id. citing Old Town Development Co. v. Langford, 349 N.E.2d 744, 764 (Ind.App.1976) and Mease v. Fox, 200 N.W.2d 791, 796 (Iowa 1972).

[13][14] In order to constitute a breach of the warranty the defect must be of a nature and kind which will prevent the use of the dwelling for its intended purpose to provide premises fit for habitation by its dwellers. At a minimum, this means the premises must be safe and sanitary of course, there is no obligation on the part of the landlord to supply a perfect or aesthetically pleasing dwelling. Pugh v. Holmes, 384 A.2d at 1240. "Materiality of the breach is a question of fact to be decided by the trier of fact on a case-by-case basis." Id. Several factors (not exclusive) are listed by the Superior Court as considerations in determining materiality, including the ****906** existence of housing code violations and the nature, seriousness and duration of the defect. Id.

We believe these standards fully capable of guiding the fact finder in his determination of materiality of the breach. Further, these standards are flexible enough to allow the gradual development of the habitability doctrine in the best common law tradition. This finds support in Elderkin v. Gaster, supra, wherein we declined to establish rigid standards for determining habitability and its breach in the builder/vendor vendee context and, instead, defined habitability in terms of "contemporary community standards" and breach of the warranty as whether the defect prevented the use of the dwelling for the purposes intended habitation. 447 Pa. at 128, 288 A.2d at 777. In that case, we held that lack of a potable water supply to the home prevented its use as habitation and, accordingly, found the implied warranty of habitability to have been breached.

***290** [15] Additionally, we agree with the Superior Court that, to assert a breach of the implied warranty of habitability, a tenant must prove he or she gave notice to the landlord of the defect or condition, that he (the landlord) had a reasonable opportunity to make the necessary repairs, and that he failed to do so. 384 A.2d at 1241.

[16] Appellant would require that a determination of breach of the implied warranty be dependent upon proof of violations of the local housing codes. We decline to accept this argument as it would unnecessarily restrict the determination of breach. The Supreme Court of Massachusetts was asked to define their implied warranty of habitability by reference to a housing code of statewide applicability, but declined to do so. In Boston Housing Authority v. Hemingway, 293 N.E.2d 831 (Mass.1973) that court stated:

> "The State Sanitary Code minimum standards of fitness for human habitation and any relevant local health regulations provide the trial court with the threshold requirements that all housing must meet. Proof of any violation of these regulations would usually constitute compelling evidence that the apartment was not in habitable condition, regardless of whether the evidence was sufficient proof of a constructive eviction under our old case law. However, the protection afforded by the implied warranty or (sic) habitability does not necessarily coincide with the Code's requirements. There may be instances where conditions not covered by the Code regulations render the apartment uninhabitable. Although we have eliminated the defense of constructive eviction in favor of a warranty of habitability defense, a fact situation, which would have demonstrated a constructive eviction, would now be sufficient proof of a material breach of the warranty of habitability, regardless of whether a sanitary code violation existed or not. 293 N.E.2d at 844, n.16."

Other courts have likewise concluded that the existence of housing code violations is only one of several evidentiary considerations that enter into the materiality of the breach issue. E. g., ***291**Foisy v. Wyman, 83 Wash.2d 22, 515 P.2d 160 (1973); King v. Moorehead, 495 S.W.2d 65 (Mo.App.1973); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972). This reasoning is even more persuasive in Pennsylvania where there is no statewide housing code and where many municipalities have not promulgated local housing regulations. [FN3]

FN3. Brief for Appellant at 31 notes that many small boroughs and townships have not adopted such regulations. And, according to Brief for Amicus Curiae, Central Pennsylvania Legal Services, p. 15, only six of seventy-two municipalities in York County, eleven of the fifty-nine municipalities in Lancaster County, and twelve out of seventy-five in Berks County have housing codes. In Perry County there are no municipalities with housing codes.

[17] In this case, appellee alleged ten specific defective conditions including a leaky roof, lack of hot water, leaking toilet and pipes, cockroach infestation and hazardous floors and steps. If proven on remand, these conditions would substantially prevent the use of the premises as a habitable **907 dwelling place and could justify a finding by the trier of fact that a breach of the implied warranty of habitability had occurred.

IV. REMEDIES FOR BREACH OF IMPLIED WARRANTY OF HABITABILITY

[18] As the adoption today of the implied warranty of habitability creates new legal rights and obligations, it is essential for this Court to outline and clarify some of the available remedies and the manner in which these remedies are to be implemented. The tenant may vacate the premises where the landlord materially breaches the implied warranty of habitability we have held analogously where the landlord materially breaches express covenants to repair or to maintain the leasehold in a habitable state. See McDanel v. Mack Realty Co., supra, 315 Pa. at 174, 172 A. 97. Surrender of possession by the tenant would terminate his obligation to pay rent under the lease. Lemle v. Breeden, 51 Haw. 426, 462 P.2d 470 (1969) Murray, On Contracts A Revision of Grismore on Contracts, s 183, Mutual Performances in Leases The Implied Warranty of Habitability (1974) (hereinafter Murray).

*292 [19][20][21] Where the tenant remains in possession, and the landlord sues for possession for unpaid rent, the implied warranty of habitability may be asserted as a defense. Virtually all courts addressing the issue of breach of this warranty as a defense concur with this view. See e. g., cases cited by the Superior Court at 384 A.2d 1240 and Rome v. Walker, 38 Mich.App. 458, 196 N.W.2d 850 (1972); Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973); See Restatement (Second) of Property, Landlord and Tenant, s 11.1 (Rent Abatement). If the landlord totally breached the implied warranty of habitability, the tenant's obligation to pay rent would be abated in full the action for possession would fail because there would be no unpaid rent. Pugh v. Holmes, supra, 384 A.2d at 1241, Citing Javins v. First National Realty Corp., supra, 138 U.S.App.D.C. at 380-81, 428 F.2d 1082-83. If the landlord had not breached the warranty at all, no part of the tenant's obligation to pay rent would be abated and the landlord would be entitled to a judgment for possession and for unpaid rent. Id. If there had been a partial breach of the warranty, the obligation to pay rent would be abated in part only. In such case, a judgment for possession must be denied if the tenant agrees to pay that portion of the rent not abated; if the tenant refuses to pay the partial rent due, a judgment granting possession would be ordered. Id.

[22][23][24] Appellant urges that the failure of the Superior Court to require a method of escrowing unpaid rent monies is "the most glaring defect" in the Superior Court's decision below. This Court is in favor of an escrow procedure, but is not inclined to make such procedure mandatory. Rather, the decision whether a tenant should deposit all or some of the unpaid rents into escrow should lie in the sound discretion of the trial judge or magistrate. The tenant may retain his rent, subject to the court's discretionary power to order him, following a hearing on the petition of the landlord or tenant, to deposit all or some of the rent with the court or a receiver appointed by the court. This is the approach taken by a majority of the courts which permit the tenant to *293 withhold rent pending the outcome of litigation in which the defense of the implied warranty of habitability is asserted. Restatement (Second) of Property, Landlord and Tenant s 11.3, Reporter's note 2 (1970) Citing, e. g., Javins v. First National Realty Corp., supra and Hinson v. Delis, 26 Cal.App.3d 62, 102 Cal.Rptr. 661 (1972). Factors to be considered include the seriousness and duration of the alleged defects, and the likelihood that the tenant will be able to successfully demonstrate the breach of warranty. Id.

[25][26][27][28] Also at issue in this case is the availability of the " repair and deduct" remedy. Appellee, after allegedly giving notice to the landlord and a reasonable opportunity to repair, repaired a broken door lock and deducted $6.00 from her rent for the

month of May, 1975. We have held that, where a landlord fails to perform a lease **908 covenant, the tenant may perform it at his own expense (if reasonable) and deduct the cost of his performance from the amount of rent due and payable. McDanel v. Mack Realty Co., supra, 315 Pa. at 177, 172 A. 97 (landlord failed to perform covenant to supply heat tenant could have provided heat and deducted reasonable costs from rent). Similarly, the repair and deduct remedy is appropriate for breaches of the implied warranty of habitability. This remedy has been approved in other jurisdictions, Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 (1970); Garcia v. Freeland Realty Co., 63 Misc.2d 937, 314 N.Y.S.2d 215 (1970) and by the Restatement (Second) of Property, Landlord and Tenant s 11.2. Section 11.2 provides "(i)f a tenant is entitled to apply his rent to eliminate the landlord's default, the tenant, after proper notice to the landlord, may deduct from his rent reasonable costs incurred in eliminating the default." "Proper notice" in this instance is one that describes the default and specifies what steps will be taken by the tenant to correct it if the landlord has not eliminated the defective condition within a reasonable time. See Comment a. to s 11.2. The use of the repair and deduct remedy is not, of course, unlimited. Repairs must be reasonably priced and cannot exceed the amount of the rent available to apply against the cost, i. e. the amount of rent *294 owed for the term of the lease. Merilh v. Pan American Films, 200 So.2d 398 (La.App.1967). See comment c. to s 11.2. Further the tenant runs the risk of an adverse court finding on the necessity of the repairs if the court finds that the repairs were not needed to render the premises habitable, the court must find the rent deduction unreasonable. In such event, the landlord could obtain a judgment for the amount of rent deducted. Or if the repairs were needed but the cost was excessive, the landlord could recover the difference between the actual cost and what would have been the reasonable cost of repairs.

[29][30][31] Appellant also asserted a counterclaim for $25.00 for repairs allegedly made at various times to the heating system, the bathroom floor and to replace a broken window pane. In principle, we see little difference between the counterclaim for repairs and the "repair and deduct" remedy. The counterclaim can be utilized to recover damages from already paid rents based upon expenses incurred in making repairs of defective conditions after failure of the landlord to repair within a reasonable time following proper notice. See Marini v. Ireland, supra and Garcia v. Freeland Realty Co., supra, Pines v. Perssion, 14 Wis.2d 590, 111 N.W.2d 409 (1961). The limitations applicable to the repair and deduct remedy are applicable here as well the cost of the repairs must be reasonable and the maximum amount which the tenant may expend is the amount of rent owed for the term of the lease. However the counterclaim is not available where the tenant has not paid his rent for the period in which the repairs are made and the cost of the repairs do not exceed the rent owed for that period. In that case, there are no damages as the tenant has already been compensated for the cost of repairs by not paying rent.[FN4]

> FN4. From the pleadings, it appears that some of appellee's counterclaims were for recovery of the cost of repairs from Already paid rents while some of the counterclaims were for repairs made during periods in which no rent was paid. If such is the case, the latter claims would fail as the appellee would have suffered no damages.

*295 [32][33] Finally, since the lease is a contract, other traditional contract remedies such as specific performance are available to enforce the implied warranty of habitability. Javins, supra 138 U.S.App.D.C. at 380, at 428 F.2d 1082, n. 61; See Uniform Residential Landlord and Tenant Act s 4.101(b) (1972) And Blumberg and Robbins, Beyond URLTA: A Program for Achieving Real Tenant Goals, 11 Harv.Civ.Rts. Civ.Lib.L.Rev. 1 (1976). As with other contracts, however, specific performance is an equitable remedy not available as a matter of course but only in unique situations. 11 S. Williston, Contracts s 1418A (3d ed. 1968); Murray, supra at s 220.

**909 V. MEASURE OF RENT ABATED

[34] The Superior Court held, where the tenant claims the breach of warranty of habitability as a defense or counterclaim "the monthly rent past and future (until the dwelling is returned to a habitable state) may be reduced by the difference between the agreed upon rent and the fair rental value of the apartment in its present condition." It is urged that this Court adopt the "percentage reduction of use" method of calculating damages for breach of the implied warranty (This method would reduce the amount of rent owed by a percentage equal to the percentage by which the use of the premises has been decreased by the breach of warranty.) rather than the "fair rental value" ap-

proach suggested by the Superior Court. We hold that the "percentage reduction in use" method is the correct manner of determining the amount by which the obligation to pay rent is abated.

The "fair market value" approach suffers from two drawbacks. The first is that it assumes there is a Fair market for the defective premises. This assumption is questionable given the housing crises which exists today. Reitmeyer v. Sprecher, supra 431 Pa. at 289-90, 243 A.2d at 398 (1968). Because of the housing shortage, "Premises which, under normal circumstances, would be completely unattractive for rental are now, by necessity, at a premium." ***296**Id. at 290, 243 A.2d at 398. As one author phrased it "it seems questionable whether in asserting damages in this situation cognizance should be taken of a 'fair' market value of noncomplying housing such a market could be regarded as an illegal 'black market' existing only by violation of law." Note, 84 Harv.L.Rev. 729, 737 (1971).

The second flaw is a practical one. The determination of the fair market value of the defective dwelling would in all probability require some type of market survey, statistical evidence, or expert testimony from realtors or appraisers familiar with the local rental market. See, Moskovitz, "The Implied Warranty of Habitability: A New Doctrine Raising New Issues : 62 Calif.L.Rev. 1444, 1467-68 (1974). "The cost of obtaining such evidence or testimony would simply be prohibitive to many litigants, especially low-income tenants." Id.

One court which initially adopted a "fair market value" approach in computing the amount of rent to be abated, McKenna v. Begin, 3 Mass.App. 168, 325 N.E.2d 587 (1975) (McKenna I), rejected that approach following appeal from the trial court on remand, and opted for the "percentage reduction in use" formula, McKenna v. Begin, 362 N.E.2d 548 (Mass.App.1977) (McKenna II), in order to fashion a measure of damages "which more closely reflects the actual injury suffered by (the tenant)." 362 N.E.2d 552. Under this approach, the rent is to be abated "by a percentage reflecting the diminution the value of the use and enjoyment of leased premises by reason of the existence of defects which gave rise to the breach of habitability." Id. citing Green v. Superior Court, supra, Academy Spires, Inc. v. Brown, 111 N.J.Super. 477, 268 A.2d 556 (1970) and Morbeth Realty Corp. v. Rosenshine, 67 Misc.2d 325, 323 N.Y.S.2d 363 (N.Y.Cir.Ct.1971).

This method of evaluation better achieves the goal of returning the injured party (the tenant) to the position he would have been in if performance had been rendered as warranted. Corbin, Contracts s 992 (1964); Murray, supra at s 220. The tenant bargains for habitable premises and ***297** the rental price reflects the value placed on those premises by the parties. Therefore, where the premises are rendered uninhabitable, in whole or in part, the contract price (fixed by the lease) is to be reduced by the percentage which reflects the diminution in use for the intended purpose. Another advantage of the percentage reduction method is that the need for expert testimony is greatly reduced as the determination in "percentage of reduction in use" of a residential dwelling is a matter within the capabilities of the layman.

[35] Finally, there should be no doubt that recovery will not be precluded simply because there is some uncertainty as to the precise amount of damages incurred. It is ****910** well established that mere uncertainty as to the amount of damages will not bar recovery where it is clear that damages were the certain result of the defendant's conduct. Academy Spires, Inc., supra, 111 N.J.Super. at 486, 268 A.2d 556. McCormick, Damages s 27, p. 101 (1935). The basis for this rule is that the breaching party should not be allowed to shift the loss to the injured party when damages, even if uncertain in amount, were certainly the responsibility of the party in breach. Story Parchment Company v. Paterson Paper Company, 282 U.S. 555, 563, 51 S.Ct. 248, 75 L.Ed. 544 (1931). As noted by the Supreme Court of California, damages in this case "do not differ significantly from a host of analogous situations, in both contract and tort law, in which damages cannot be computed with complete certainty." Green v. Superior Court, supra, 10 Cal.3d at 638, 111 Cal.Rptr. at 719, 517 P.2d at 1183.

Accordingly, on remand, if breach of the implied warranty of habitability is proven, the trial court is to apply the "percentage reduction in use" formula to determine the percentage by which the use and enjoyment of the premises had been diminished.

For the foregoing reasons, we overrule all cases inconsistent with this opinion, affirm the order of the Superior Court ***298** with the aforementioned modi-

fications, and remand to the Court of Common Pleas of Franklin County for proceedings consonant with this opinion.

ROBERTS, J., filed a concurring opinion in which NIX and MANDERINO, JJ., join.

OPINION CONCURRING IN PARTS I, II & III

ROBERTS, Justice.

I join in Parts I, II & III of the Opinion of the Court which adopt the position of the Restatement (Second) of Property, Landlord and Tenant ss 5.5(1) & (3) and Comment f (1977). As the Reporter's Note to Section 5.5 points out,

> "to impose the burden on the landlord fulfills the expectations of the parties that the tenant seeks property suitable for a dwelling and the landlord provides property fit for that purpose:
>
> > The very object of the letting was to furnish the defendant (the tenant) with quarters suitable for living purposes. This is what the landlord at least impliedly (if not expressly) represented he had available and what the tenant was seeking. Marini v. Ireland, 56 N.J. 130, 144, 265 A.2d 526, 533-534 (1970).
>
> Thus, in leases of residential property the conclusion is justified that the landlord impliedly promised to make repairs. A number of courts have adopted the position of this section that the landlord's implied promise of habitability and the tenant's obligation to pay rent are mutually dependent. Green v. Superior Court, 10 Cal.3d 616, 111 Cal.Rptr. 704, 517 P.2d 1168 (1974); Rome v. Walker, 38 Mich.App. 458, 196 N.W.2d 850 (1972); Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973); Berzito v. Gambino, 63 N.J. 460, 308 A.2d 17 (1973)."

Because, however, this case is before this Court on a demurrer, I believe any discussion of remedies and damages premature.***299** I would remand for proceedings consistent with Parts I, II, and III of the Opinion of the Court.

NIX and MANDERINO, JJ., join in this opinion.

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