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LANDLORD AND TENANT

I

Probably no segment of English and American common law has a longer history than landlord-tenant law. By the same token, few segments of our common law have undergone such little change since William the Conqueror divided England among his followers-in-conquest in 1066. Until the 13th century, tenants had no rights whatever in relation to the land. From the 13th through the 16th century recognition of a tenant as an owner of an interest in land came about. With this came the right of quiet enjoyment of the land from wrongful acts of landlords. The common law did not develop any implied covenants of habitability since the land, rather than any dwellings, was the subject of the tenancy and it was the land that produced income.

From the emphasis on land rather than dwellings and structure, landlord-tenant law developed apart from contract law. In a contract, if either party defaults, the other party is relieved of obligations. Until recent years, the courts have held that the landlord-tenant relationship was independent. That is, if the house rented burned down, even through no fault of the lessee, the lessee continued to be liable for rent for the term of the lease. This somewhat preposterous situation was based on the old concept of land as the basis for rent. The more common application of this concept has been in questions of habitability rather than actual destruction of a dwelling. The common law has held that caveat emptor applies to tenants and that dwellings are rented "as is." Further, it was the responsibility of the lessee to maintain the premises.

In the past 5 years or so, there has been a two pronged attack on the traditional rights of landlords. First, the courts have greatly extended the implied covenant of habitability using building and health codes as criteria of habitability. They have also extended landlord's tort liability including even protection of tenants against criminal acts of third parties. With implied warranties recognized by courts, the landlord-tenant relationship

has become inter-dependent as in contract law. Thus if a dwelling unit is not habitable in terms of local code compliance, the tenant's responsibility to pay the rent is altered. Devices for altering the rent vary according to the extent of the problems with the dwelling and may involve paying the rent to a court, into escrow, or making repairs and deducting the amount from the rent.

II

The new relationship between landlord and tenant initiated by the courts brought about the drafting of a model landlord-tenant act in 1969 by the American Bar Foundation. That model became the Uniform Residential Landlord and Tenant Act of the National Conference of Commissioners on Uniform State Laws in 1972. Some of the major provisions of the uniform act are as follows:

1. Generally, it codifies what has largely been governed by common law.

2. No more than 1 month's rent may be demanded as a damage deposit.

3. A landlord can be sued for return of damage deposits and be awarded twice the deposit plus all attorney's fees if he wins.

4. A lease cannot require a tenant to waive any legal rights in advance.

5. A safe, clean and habitable residence is made a requirement regardless of the lease.

6. If the residence does not meet these criteria, the tenant may (a) break his lease, (b) make repairs and deduct costs from the rent, (c) deduct damages in proportion to deficiencies, or (d) house himself elsewhere and pay no rent until the problem is corrected.

7. Eviction of a tenant for complaining or organizing other tenants is made illegal.

8. If a tenant breaks the lease but the landlord loses no rent because he rents the premises immediately, the former tenant is not liable for any additional rent.

III

Nevada's landlord-tenant law is found in two chapters: NRS 40.215-40.420 and NRS 118.140-118.210. The references in chapter 40 deal primarily with eviction proceedings. Chapter 118 provides for 30 days notice before rent can be raised. Several provisions were added in 1973 which (1) insure that eviction is done only under chapter 40, NRS, (2) that a tenant who abandons the dwelling owing rent may have any property left sold by the landlord, and (3) that all apartments must have leases with certain minimum provisions.

There is no Nevada law on rental of mobile home lots although the eviction proceedings of chapter 40 apply to mobile homes. In 1973, the apartment lease provisions were added to NRS which require that maintenance and repair arrangements must be spelled out in the lease. This does not apply to houses or mobile homes so case law prevails which states that the lessor has no obligation to maintain or repair. Nevada case law also holds that the tenant has tort liability in the case of injury, regardless of whether the cause of the accident was attributable to the landlord's negligence.

IV

If, in fact, the landlord-tenant common law prevalent in this country up until the past several years is anachronistic, unsuitable to modern urban conditions and grossly unfair to tenants as numerous observers contend, then Nevada law is subject to criticism. With the exception of the few 1973 additions, Nevada statutory law says little or nothing about leases, rights of tenants, habitability or tort liability. Even Nevada case law as cited in the Nevada Digest is oriented much more to ranches and farms than to residential dwellings.

One of the reasons that such significant change has occurred in landlord-tenant law over the past decade is that an ever increasing number of middle class Americans have become renters. The cost of new single family housing tells us that this number will increase in the future. Middle class tenants have higher expectations than the poor who have always been tenants. They will organize and seek legal remedies to a relationship built to favor landlords. To the extent that ever more Nevadans rent houses, apartments, mobile homes and mobile home lots, the pressures to reform Nevada law to reflect greater tenant rights can be expected to grow. The Uniform Residential Landlord and

Tenant Act is designed to meet these growing pressures. Substantial parts of the act have been enacted through 1973 in Florida, New Jersey, California, Arizona, Maine, Maryland, Massachusetts, Connecticut, Delaware, Hawaii, Illinois, Michigan, Minnesota, Pennsylvania and Rhode Island. Arizona has come closest to adopting the full uniform act.

This paper has not addressed the rental of mobile home lots. Neither does the uniform act. Any consideration of the landlord-tenant relationship should include this rapidly growing segment of rental property as well.

SUGGESTED READING
(Available in the Research Library)

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