

HEALTHY AND AFFORDABLE HOUSING Fact Sheet

Rent Escrow as a Tool for Enforcing Tenants' Rights

Summary

Housing and health are directly correlated—a stable, quality home is a basis for a healthy life. Housing quality includes the physical condition of the home, as well as the social and physical environment that surrounds it.¹ Various aspects of housing quality can affect an individual's health including air quality, home safety, space, and the presence of mold, asbestos, or lead.² Poor quality housing is correlated with health problems, such as chronic diseases, injuries, and poor mental health.³ Unhealthy housing conditions are more common among renters. Research shows that in 2019, 3.3 million tenants living in rental units were living in “moderately inadequate” housing,⁴ which included housing conditions without safe or adequate heat, no electricity, no kitchen, or no usable shower or toilet.⁵ Individuals living in unhealthy housing conditions are more susceptible to mold, rodents, and dust—conditions that lead to an increased risk of allergies, asthma, and respiratory illnesses.⁶ Exposure to lead, asbestos, or carbon monoxide can lead to an increased risk of neurological complications, developmental disorders, cancer, asthma, and other respiratory illnesses.⁷ Improper ventilation and temperature control may increase risk of respiratory illnesses, asthma, and exposure to excessive heat or cold.⁸ Lastly, those living in overcrowded housing may be at higher risk of infectious diseases and worse mental health outcomes.⁹ Although tenants have a right to live in a home that is suitable for human habitation, tenants often remain in substandard housing because they are unaware of their legal rights or how to enforce them.

Remedies for Poor Rental Housing Conditions

The Warranty of Habitability: The Basis for a Tenant's Right to a Safe and Healthy Home

Renters have a right to property that meets basic structural, health, and safety standards, and landlords have a duty to maintain their properties in a way that meets these standards. This duty arises from the “warranty of habitability,” which can be express (written into the lease itself) or implied by law. In most residential leases, the warranty of habitability is implied.¹⁰ Habitability standards are often set by local housing codes, but they can also be defined by statute, ordinance, or common law. Although the laws vary by state, they generally require that a tenant notify their landlord that there is a serious and substantial defect or condition and allow the landlord reasonable time to repair it. What constitutes a substantial defect or condition is usually defined by statute or ordinance and may include a lack of heat or hot water, mold, pest infestations, bedbugs and rodents, broken appliances, or lead paint violations.¹¹



Affirmative Claims and Rent Escrow

States allow for various remedies for breach of the warranty of habitability. Tenants may bring an action for the breach; they may also raise the warranty of habitability as a defense if their landlord has sued them for failure to pay rent.¹² In addition, tenants may enforce the warranty of habitability through a legal process called *rent escrow*. Specific rent escrow provisions vary by jurisdiction, but generally courts allow a tenant to pay rent directly to the court instead of the landlord until a court-ordered inspection determines that the landlord has made the necessary repairs.¹³

Habitability claims can be successful when tenants raise them properly. They can compel landlords to make repairs and improvements to make a tenant's property habitable.¹⁴ Tenants' ability to bring affirmative legal actions incentivizes landlords to maintain habitable premises¹⁵ and prevents landlords from receiving money when they are not maintaining habitable living conditions.¹⁶ Rent escrow is particularly useful when a tenant would prefer to remain in the home than move because other remedies, such as an early termination of the lease, would result in the tenant having to move.

Impediments to the Effectiveness of Affirmative Claims and Rent Escrow


While there are remedies for tenants who face uninhabitable property conditions, the success of these affirmative legal efforts is limited as many tenants are unrepresented and unaware of their rights. The average tenant is unprepared and often unaware of how to advocate for themselves or assert valid defenses, and without legal representation most tenants lose their cases.¹⁷ Additionally, these processes fail to acknowledge continuous barriers for low-income tenants.¹⁸ Low-income tenants are more likely to be behind on rent payments and less likely to have access to alternative housing; therefore, they look to the courts to enforce the housing standards.¹⁹ But these tenants are least likely to benefit from habitability claims and most likely to encounter substandard housing.²⁰

Research shows that the main reason tenants' habitability claims fail is due to lack of access to counsel. A study done in Baltimore demonstrated that "renters are almost always justified in their rent escrow claims, but they encounter a process that is ineffective in providing relief for poor housing conditions."²¹ The process was difficult for tenants to even start because the forms are written in legalese, referencing terms such as the *warranty of habitability* and the *covenant of quiet enjoyment* that are unknown to the average tenant; these complicated forms ultimately impeded many tenants' ability to bring claims.²² In addition, the courts often failed to award monetary relief even when the facts of the case established that the tenant was legally entitled to it.²³ Evidence from the Baltimore study suggests that enforcing the warranty of habitability is often fraught with limited relief, delayed remedies, complicated processes, and a system that disproportionately burdens tenants with low incomes—barriers that could be addressed by access to legal counsel.

However, recent research indicates deeper systemic problems can stymie the effectiveness of providing tenants access to legal counsel. Two studies found that if tenants had access to counsel then they were more likely to bring a warranty of habitability claim and receive a rent abatement.²⁴ However, the New York study found that there were still many cases in which the tenant had legal representation but did not benefit from raising the warranty of habitability.²⁵ Thus, the study concluded that the lack of success with warranty of habitability claims may not only be due to a tenants' lack of access to counsel, but also to other factors such as landlords not complying with orders to make the necessary repairs, judges not using their authority to hold landlords accountable for not making repairs, or judges not ordering Housing Code inspections even when tenants reported defective conditions.²⁶ These New York findings suggest that providing access to counsel can help tenants navigate the complex legal process; however, access to counsel on its own is unlikely to expand the benefits of warranty of habitability claims, such as improving rental property conditions.²⁷

Maximizing Effectiveness of Legal Processes to Ensure Safe and Healthy Housing Conditions

There are various ways to address the barriers that exist for tenants in filing and prevailing in warranty of habitability claims. First, increasing access to counsel for tenants in court proceedings is an important step. While it seems to matter in which state, jurisdiction, or even courtroom a tenant is, research supports the proposition that the main reason tenants' habitability claims fail is lack of legal counsel. Legal representation gives tenants the opportunity to understand their rights and become more familiar with the rent court process. In addition, legal counsel assists tenants by helping them gather



the appropriate paperwork, document important pieces of evidence, and submit documents in a timely manner.²⁸ However, as discussed above, access to counsel alone may not solve the myriad problems associated with complicated court proceedings and may prove to be a prohibitively costly policy measure in some areas.²⁹

Courts should consider implementing alternative measures to streamline the rent court process for tenants, including hiring additional staff, such as paralegals to help handle the cases and establish the facts for each case, or outreach coordinators³⁰ to guide unrepresented tenants through the court process or simply provide them with the basic materials to understand the process.³¹ Alternatively, courts could provide training for non-lawyers and community groups to support unrepresented tenants by explaining the process and assisting tenants with filling out paperwork and gathering the evidence required to raise habitability claims.³² Such “legal navigators” could also review cases, help tenants identify defenses, and provide them with referrals to free legal assistance by an attorney.³³ These options are less costly than employing more judges and tenant attorneys and may prove effective.³⁴

Other simple and inexpensive changes to benefit tenants in habitability claims include posting flyers or updating government websites with information about the court process, court buildings, and how to access court notices and records.³⁵ Providing tenants with easily accessible information in multiple languages that describes rent court and the rent escrow process would help tenants better understand their legal rights and how to apply them. Courts could rewrite forms provided to tenants in language that is accessible to non-lawyers and include questions that a judge will typically ask tenants in these cases to allow tenants to better prepare for court.³⁶ Courts could also require a checklist for habitability cases that is based on the jurisdiction’s law and describes specific issues the judge will consider in such cases.³⁷ These changes would allow the court to run more efficiently while also guiding tenants through the court process.³⁸

Lastly, jurisdictions could consider allowing tenants in multiunit housing to bring claims of poor or dangerous conditions collaboratively since neighbors often are suffering from the same unhealthy living conditions. Collaborative filing would create an easier, more efficient process for tenants to bring a single case; demonstrate to the court the full picture of the landlord’s failings;³⁹ may decrease tenants’ fears of retaliation when filing alone; and would allow remedies that address shared areas to benefit all tenants.⁴⁰

These and other creative measures would promote equity in the rent court process by ensuring that legal remedies are available to all citizens regardless of their knowledge of the law or ability to pay for an attorney, particularly as research shows that women and children of color disproportionately bear the burden of poor housing and displacement. Although some solutions may require significant financial investment, any improvement to the rent court process would likely result in increased efficiency and reductions in unnecessary tenant displacements, which are extremely costly to the state and burdensome to public health. Across the country, legislatures recognize that evictions create significant costs—including emergency shelters, temporary housing, mental health care, transportation costs, foster care, and costs associated with children changing schools.

Conclusion

Quality housing is necessary for a healthy life, yet it is denied to many renters for whom valid legal remedies remain out of reach. Successful habitability claims can provide an opportunity for renters to stay in their homes and require landlords to make necessary repairs or improvements. Encouraging evidence suggests that affirmative legal claims can compel landlords to make critical repairs when tenants are aware of their rights, represented by counsel, and given the opportunity to present their case. Although problems remain with the rent court and rent escrow processes, there are various, inexpensive approaches that could mitigate them.

SUPPORTERS

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation. This document was developed by Nicole Fullem and Emily Ordakowski, 2021 J.D. Candidates at the University of Maryland Francis King Carey School of Law, under the supervision of Kerri McGowan Lowrey, JD, MPH, Deputy Director and Director for Grants & Research, Network for Public Health Law—Eastern Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

This fact sheet was finalized and published in December 2022.



Robert Wood Johnson Foundation

¹ Quality of Housing, Healthy People, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing> (last visited Mar. 25, 2022).

² Id.

³ Louis Morales-Brown, How Can Housing Influence Health?, *Med. News Today* (May 13, 2021), <https://www.medicalnewstoday.com/articles/housing-and-health>.

⁴ Mollie Bryant, Amid a Housing Industry Boom, Renters are Paying More for Substandard Homes, *Big if True* (Jan. 26, 2022), <https://www.bigiftrue.org/2022/01/26/substandard-housing/> (citing American Housing Survey Table Creator, U.S. Census Bureau, https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=00000&s_year=2019&s_tablename=TABLE1&s_bygroup1=1&s_bygroup2=1&s_filtergroup1=1&s_filtergroup2=1 (last visited Apr. 1, 2022)).

⁵ Federal Preference: Substandard Housing, 24 C.F.R. § 5.425 (2000).

⁶ Morales-Brown, *supra* note 3.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Implied Warranty of Habitability, Legal Information Institute, https://www.law.cornell.edu/wex/implied_warranty_of_habitability (last visited Apr. 4, 2022); see e.g., Baltimore City Implied Warranty of Fitness, *People's Law Library of Md.* (Dec. 13, 2021), <https://www.peoples-law.org/baltimore-city-implied-warranty-fitness>.

¹¹ PropertyClub Team, Warranty of Habitability: New York Property Law § 235-b, *Prop. Club* (Jan. 12, 2022), <https://propertyclub.nyc/article/tenant-rights-in-nyc-what-is-the-warranty-of-habitability>.

¹² Baltimore City Implied Warranty of Fitness, *supra* note **Error! Bookmark not defined.**

¹³ Latoya Irby, Jefreda R. Brown, & Jess Feldman, What is Rent Escrow?, *The Balance* (Nov. 16, 2021), <https://www.thebalance.com/what-is-rent-escrow-5190759>.

¹⁴ Paula Franzese, Abbott Gorin, & David Guzik, The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform, 69 *Rutgers Univ. L. Rev.* 1, 5 (2016).

¹⁵ Id. at 24.

¹⁶ Jana Ault-Phillips & Carol J. Miller, Missouri's Implied Warranty of Habitability: It's Time For Meaningful Clarification 75 *J. Mo. B.* 232, 259 (2019).

¹⁷ Heidi Schultheis & Caitlin Rooney, A Right to Counsel is a Right to a Fighting Chance, *Ctr. Am. Progress* (Oct. 2, 2019), <https://www.americanprogress.org/article/right-counsel-right-fighting-chance/>.

¹⁸ See Jana Ault Phillips & Carol J. Miller, The Implied Warranty of Habitability: Is Rent Escrow the Solution or the Obstacle to Tenant's Enforcement?, 25 *Cardozo J. Equal Rts. & Soc. Just.* 1, 28 (2018) ("The various deficiencies in the process are exacerbated by the fact that habitability issues arise most often with low-income households—these households are also most likely to be behind on rent payments.").

¹⁹ Id. at 26, 31.

²⁰ *Id.* at 28.

²¹ Public Justice Center, *Justice Diverted: How Rents Are Processed in the Baltimore City Rent Court*, Abell Found. 1, 41 (Dec. 2015), <https://abell.org/sites/default/files/files/cd-justicediverted216.pdf>.

²² *Id.*

²³ *Id.* at 44; Michele Cotton, *A Case Study on Access to Justice and How to Improve It*, 16 J.L. Soc’y 61, 85 (2014).

²⁴ See Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. Chi. L. Rev. 147, 210 (2020) (“Represented tenants are nine times as likely to receive a rent abatement as compared to unrepresented tenants who have the same number and class levels of open code violations at their units.”); see Franzese, Gorin, & Guzik, *supra* note 14, at 24 (finding that the tenant who was effectively represented by counsel was more likely to assert her rights, and after bringing the warranty of habitability claim the tenant received a fifty percent rent abatement).

²⁵ See Summers, *supra* note 24, at 205 (explaining that many of the represented tenants who had cases that clearly demonstrated open code violations in their units did not receive a rent abatement).

²⁶ *Id.* at 204.

²⁷ *Id.* at 212.

²⁸ Public Justice Center, *supra* note 21, at 50.

²⁹ Cotton, *supra* note 23, at 94.

³⁰ Ault-Phillips & Miller, *supra* note 16, at 260.

³¹ Cotton, *supra* note 23, at 93.

³² *Id.* at 94.

³³ Public Justice Center, *supra* note 21, at 50.

³⁴ Cotton, *supra* note 23, at 94.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See *id.* (explaining that although this may require judges to spend more time on one case, it would allow the court to focus on what is in dispute and reduce time overall).

³⁸ *Id.* at 95.

³⁹ See Cotton, *supra* note 23, at 89 (citing David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 Calif. L. Rev. 389, 434–35 (2011)) (“Indeed, one of the pressures on such courts that has been stressed by commentators is that the large number of cases on their dockets each day, which could help explain judges’ limited attention to the potentially time consuming claims.”).

⁴⁰ See Summers, *supra* note 24, at 173 (citing David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 Calif. L. Rev. 389, 408 (2011)) (explaining the warranty of habitability’s ineffectiveness may be due to a tenant’s fear of landlord retaliation if they bring a claim).