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TENANTS' RIGHT: THE LAW ON PAPER VERSUS THE LAW IN PRACTICE

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I. INTRODUCTION

In New York City, the State of New Jersey and around the nation, the housing market has seen a general decline in home ownership.² Due to a host of economic and cultural reasons, Millennials and other generations alike are choosing to rent more and buy less.³ With a likely economic recession looming ahead due to the COVID-19 global pandemic shutdowns, it is unlikely that this housing trend will reverse. This paper seeks to analyze various challenges and abuses that many tenants in tri-state area housing market encounter and the existing legal framework in place to resolve such challenges. The State of New Jersey has been a leader in advancing consumer protection since the 1970s and has adopted a strong stance towards tenants' rights laws.⁴ The Truth-in-Renting, the Implied Warranty of Habitability and a developed statutory framework for individuals facing eviction proceedings are just a few examples of the advanced infrastructure which exists in New Jersey.⁵ This paper seeks to investigate the challenges that tenants may face from the formation of the lease contract to completion of a residential lease and post-tenancy procedures. While New Jersey has a protective legal structure to shield tenants from landlord harassment, there is a gap between the available rights and the tenants' ability to defend themselves on the basis of these rights.

II. BACKGROUND

² See Richard Florida, *The Great Housing Reset*, CITYLAB (May 2, 2018), <https://www.citylab.com/equity/2018/05/the-great-housing-reset/559466/>.

³ Laura Kusisto, *More People Think Renting is a Better Deal Than Buying*, WALL ST. J. (Oct. 24, 2017), <https://www.wsj.com/articles/more-people-think-renting-is-a-better-deal-than-buying-1508842803>; see also Annie Nova, *Here's why millions of millennials are not homeowners*, CNBC (July 11, 2018), <https://www.cnbc.com/2018/07/09/these-are-the-reasons-why-millions-of-millennials-cant-buy-houses.html>.

⁴ See *NJ Consumer Protection Law*, LAW OFFICE OF ROBERT J. WITTMAN, <https://rjwnjlaw.com/nj-consumer-protection-law> (last visited Apr. 2, 2019).

⁵ See generally *Landlord-Tenant Information*, ST. OF N.J. DEP'T OF COMTY. AFF., https://www.state.nj.us/dca/divisions/codes/offices/landlord_tenant_information.html (last visited Mar. 10, 2019); see also *Habitability Bulletin*, ST. OF N.J. DEP'T OF COMTY. AFF. (Feb. 2008), https://www.state.nj.us/dca/divisions/codes/publications/pdf_tti/habitability.pdf.

A. GENERAL TREND IN HOUSING: DECLINE IN HOME OWNERSHIP, INCREASE IN RENTING

Renting is on the upswing, according to a recent Pew Research Center study.⁶ In 2016, over forty million American households were renters, with twenty percent of those renting households formed in the past decade.⁷ Demand for rental properties cuts across socio-economic and age divides, steadily inclining since the Great Recession of 2008.⁸ Although “[r]ecent research indicates that [] some of those increases can be explained by population shifts, a significant portion is the result of declines in homeownership since the Great Recession.”⁹ The report elaborates further on this social trend, explaining that households have transitioned more slowly to home ownership than in the past, following the Great Recession.¹⁰ As the economic downturn created a huge surge in the housing rental market, less rental properties remained vacant and landlords could increase rent premiums due to increased demand.¹¹ Increasing rent premiums limits the amount of savings renters can accrue, and hence “more households rely on renting for their long-term housing needs.”¹²

In turn, this has created what social scientists call “the rent burden.”¹³ The rent burden occurs when an individual or a joint household spends thirty percent or more of their pretax income on rent, and in 2015, thirty-eight percent of U.S. renters were considered rent-burdened.¹⁴ Rent-burdened households are less financially stable than un-burdened households, less likely to transition to homeownership, more likely to experience eviction and are generally more vulnerable to housing instability.¹⁵ Undoubtedly, job loss caused by the COVID-19 global pandemic will continue to prevent

⁶ *American Families Face a Growing Rent Burden*, PEW RES. CTR. 4 (Apr. 19, 2018), https://www.pewtrusts.org/-/media/assets/2018/04/rent-burden_report_v2.pdf.

⁷ *Id.*

⁸ *Id.* at 4-7.

⁹ *Id.* at 4.

¹⁰ *See id.* at 8.

¹¹ *See generally id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 4.

many American households from achieving the dream of home ownership. As the percentage of American households in the rental market continues to increase, problems faced by residential tenants becomes increasingly relevant from a social, legal, and legislative perspective.

B. COMMON ABUSES FACED BY TENANTS

Picture raising your children in a crumbling apartment complex that has never been inspected and is infested with rats, roaches, and a multitude of unnamable molds.¹⁶ This is the case for more New Jerseyans than imaginable – in 2017 in Asbury Park, a man’s apartment in a subsidized housing complex blew up when he sprayed it with insecticide because it was “overtak[en] by roaches and [his wife] was worried about their son’s health.”¹⁷ The insecticide vapors mixed with the air of an open window and the stove’s pilot light and the apartment exploded.¹⁸

The American Housing Survey results of 2013 “found roughly 75,600 rentals in northern New Jersey that were inadequate, of the total 858,500 rental households... More than 100,000 of those units reported rat problems.”¹⁹ Close to twenty-five percent of residents living in low-income housing in northern New Jersey reported rodents in their homes.²⁰ Some residents may be afraid to report these blatant violations due to their immigration status, and, moreover, landlords use limited liability companies (LLCs) to hide their identities and avoid court actions and complaints.²¹ LLC owners frequently fail to appear in court appearances to represent themselves for minor violations such as

¹⁶ Payton Guion & Shannon Mullen, *Renter Hell, Part 1: Billions for squalor*, ASBURY PARK PRESS (Jan. 8, 2017, 10:03 AM), <https://www.northjersey.com/story/news/new-jersey/2017/01/08/renter-hell-part-1-billions-squalor/96291010/>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* Many more housing units experience similar issues, but were not included in the survey because the American Housing Survey collected a sample size and surveyed only northern New Jersey housing, excluding Central and South Jersey. *Id.*

²⁰ *Id.* For more information on the rat infestation epidemic in subsidized housing, see Payton Guion & Shannon Mullen, *Renter Hell, Part 2: Fighting the rats*, ASBURY PARK PRESS (Jan. 8, 2018, 7:56 AM), <https://www.app.com/story/insider/extras/2016/12/30/renter-hell-part-2-fighting-rats/94289002/>.

²¹ Payton Guion & Shannon Mullen, *Renter Hell, Part 3: Protected by the law*, ASBURY PARK PRESS (Jan. 8, 2017, 7:59 AM), <https://www.northjersey.com/story/insider/extras/2016/12/30/renter-hell-part-3-protected-law/94817488/>.

trash collection to larger structural issues in properties.²² Moreover, LLC owners have no real business address and often list their business address as a post-office mailbox.²³ Beepers Plus, a “beeper store” in Lakewood, NJ, is the listed business address of nearly 300 LLCs.²⁴ If a property management company is listed as an LLC, often this means that town or city officials do not know the actual identity of the property owner, nor do the tenants know the identity of their landlord to contact them directly for repairs or other issues.²⁵

Residential tenant harassment is an issue in urban centers throughout the nation.²⁶ Some examples of illegal tenant harassment include refusal of lease-renewal for rent stabilized apartments, failure to make necessary repairs, repeated offers to buy-out tenants from a lease and sending wrongful eviction notices that have no legal basis.²⁷ In deeply concentrated metropolitan areas, another tactic employed by dishonest landlords includes “using construction to harass rent-regulated tenants”²⁸ or threatening tenants by forcing numerous appearances in housing court.²⁹

A New-York based tenant’s watchdog agency, the Housing Rights Initiative (HRI), recently published a report which found over 10,000 violations of rent-regulations in New York City over a two-year period.³⁰ The report emphasized a general tendency by landlords to unlawfully de-regulate rent-regulated apartments while they received tax breaks from the city for making facility

²² *Id.*

²³ *Id.*

²⁴ *Id.* A “beeper” is a telephonic device that predated the cellphone, and is sometimes known as a “pager.” Both beepers and pagers became obsolete in the 1990s.

²⁵ *Id.*

²⁶ See generally Cynthia Cheng-Wun Weaver & Donna Chiu, *Public Interest Practitioner Section: 43 Essex Street: A Case Study in Shutting Down Tenant Harassment and Displacement with Community Organizing and Lawyering*, 21 CUNY L. REV. 326 (2018).

²⁷ *Residential Tenant Harassment*, NEW YORK CITY BAR (October 2016), <https://www.nycbar.org/get-legal-help/article/landlord-tenant/residential-tenant-harassment/>.

²⁸ Grace Ashford & Kim Barker, *18 Bills with One Goal: Bad-Landlord Crackdown*, N.Y. TIMES (Nov. 28. 2018), <https://www.nytimes.com/2018/11/28/nyregion/city-council-tenant-protections-nyc.html>.

²⁹ *Id.*

³⁰ Charles Bagli, *Are Landlords Telling the Truth? The City Doesn’t Always Check. He Does.*, N.Y. TIMES (Sept. 23, 2018), <https://www.nytimes.com/2018/09/23/nyregion/housing-rights-initiative-aaron-carr-nyc-kushner.html>.

improvements.³¹ HRI has launched over forty lawsuits against landlords in the last two years, and recently received class certification for two separate class-action lawsuits.³² Both class actions represent tenants in New York City, alleging that the landlords of 260 Convent Avenue in Hamilton Heights and 3045 Godwin Terrace in the Bronx were part of a scheme to deregulate rent-controlled apartments, while accepting the J-51 property tax benefit which requires the landlord to stabilize rents.³³ In addition to these class-actions, HRI has filed suits against landlords for overcharging tenants by over-estimating the cost of apartments renovations to justify rent increases.³⁴ This case against Big City Realty, a real estate holding company with properties in Harlem, survived a motion to dismiss on appeal.³⁵

Similarly, across the Hudson River, New Jersey Together, a community organizing 501(c)(3), addresses similar issues.³⁶ New Jersey Together is an affiliate of the Industrial Areas Foundation, a multi-faith coalition which organizes groups of individuals to tackle societal issues on a neighborhood-to-neighborhood basis.³⁷ Recognizing the stark disconnect between tenants' rights laws and regulations, and landlords' blatant non-compliance in urban centers, New Jersey Together has made landlord-accountability a pillar of its organization.³⁸ For example, in 2016, New Jersey Together launched a campaign to hold a notorious affordable housing slumlord accountable for its widespread

³¹ *Id.* Rent de-regulation occurs when the monthly rent collectible by a landlord in a rent-controlled or rent-stabilized housing unit is increased; this is allowed for a number of reasons. Rent de-regulation is permitted when a demolition occurs, substantial rehabilitation, conversion from commercial to residential, conversion from residential to commercial, "economic infeasibility," first rents or "alternative hardship." Under the "alternative hardship" reasoning, a landlord may be able to raise rents of a rent-regulated housing unit if they can show that they are unable to realize profits from the property. Adam Leitman & Dov Treiman, *Deregulation Under the New Rent Laws*, NEW YORK L. J. (Oct. 8, 2019, 12:34 PM), <https://www.law.com/newyorklawjournal/2019/10/08/deregulation-under-the-new-rent-laws/>.

³² *Id.*

³³ Will Parker, *In first for Housing Rights Initiative, two landlord lawsuits achieve class certification*, REAL DEAL (Oct. 8, 2018, 12:31 PM), <https://therealdeal.com/2018/10/08/in-first-for-housing-rights-initiative-two-landlord-lawsuits-achieve-class->

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Who We Are*, NEW JERSEY TOGETHER, <https://www.njtogether.org/who-we-are> (last visited Mar. 25, 2020).

³⁷ *Id.*

³⁸ *Id.*

abuse of tenants.³⁹ New Jersey Together’s investigation into Trendy Management Company, the property manager to 150 buildings, identified over 1,400 violations.⁴⁰

In the tri-state area, an especially pervasive issue facing tenants is the constant threat of eviction.⁴¹ A tenant may be evicted when the tenant falls behind in rent payments, the tenant may be evicted after it is given one month’s notice. Landlords may engage in nefarious behaviors to evict tenants or coerce them into willfully vacating their apartments in rent-controlled units; such tactics include “offer[ing] tenants buyouts to leave[,] ... harass[ing] them with poor services and constant construction. [S]ometimes on the flimsiest of evidence, they may sue them in housing court.”⁴² This has led to evictions in many cases.

Construction in rent-controlled apartments is often used as a mechanism to force out tenants residing in them.⁴³ In large affordable housing buildings containing rent-controlled units, property owners often send construction crews to conduct demolitions in unoccupied units.⁴⁴ Demolition crews, frequently sent without prior notice to current residents, unleash plumes of dust containing lead paint, brick and other debris into residential units.⁴⁵ Some of such construction projects are legal, but some projects are conducted illegally, without city approval or the required permits.⁴⁶ Certain landlords apply for permits with the City, representing that the apartment building they seek to renovate is unoccupied when in actuality, tenants occupy multiple units.⁴⁷ Additionally, landlords may significantly overestimate the cost of renovations in order to extract higher rents from tenants.⁴⁸

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Kim Barker et al., *The Eviction Machine Churning Through New York City*, N.Y. TIMES (May 20, 2018), <https://www.nytimes.com/interactive/2018/05/20/nyregion/nyc-affordable-housing.html>.

⁴² *Id.*

⁴³ Kim Barker, *Behind New York’s Housing Crisis: Weakened Laws and Fragmented Regulation*, N.Y. TIMES (May 20, 2018), <https://www.nytimes.com/interactive/2018/05/20/nyregion/affordable-housing-nyc.html>.

⁴⁴ See Ashford & Barker, *supra* note 28.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Will Parker, *No golden toilets at Bronstein apartments, 67 tenants allege in lawsuit*, REAL DEAL (July 25, 2017, 3:27 PM), <https://therealdeal.com/2017/07/25/no-golden-toilets-at-bronstein-apartments-67-tenants-allege-in-lawsuit/>.

Although the City of New York has numerous regulatory bodies to address issues such as illegal construction, the various agencies are divided between state and city bodies, and perform in a disunified manner.⁴⁹ Enforcement is lacking due to the sheer volume of such complaints, lack of oversight between the various agencies, and botched or incomplete investigation into tenant complaints.⁵⁰ Moreover, abusive city landlords often own multiple properties, but when allegations are made, regulators often investigate only the property named in the complaint rather than the landlord's entire property portfolio.⁵¹

The City of New York crafted a strong legislative response to some of the issues faced by its tenants.⁵² In November 2018, City Council members banded together to put forward a package of eighteen bills with the objective of closing loopholes used by landlords to force out rent-regulated tenants.⁵³ The bills included various progressive measures such as creating a “Landlords Fund Temporary Housing,” which require a landlord to “deposit money in an escrow account... equal to [ten] percent of the rent for five years to fund temporary housing for displaced tenants before a vacate order has been issued.”⁵⁴ Other bills included requiring Department of Housing Preservation and Development (HPD) to report median market rates on a neighborhood basis, while demanding landlords offering buyouts to tenants to disclose the median market rates in their offers,⁵⁵ requiring the Department of Buildings to prohibit issuance of building permits in buildings with a number of

⁴⁹ Barker, *supra* note 43.

⁵⁰ *Id.*

⁵¹ *Id.* Often, abusive landlords are owners of multiple properties and commit the same or similar violations across all of their properties. See Caitlin Mota, *Jersey City community group, mayor clash with 'Trendy Management'*, NJ.COM (Jan.16, 2019), https://www.nj.com/jjournal-news/2017/06/jersey-city-community-group_ma.html.

Investigation into the landlord's total property holdings could uncover widespread violations, rather than conducting investigations on an ad-hoc, case-to-case basis as is done now and has not proved effective. *Id.*

⁵² Amy Plitt, *City Council unveils 18 bills aimed at protecting NYC tenants*, CURBED (Nov. 28, 2018), <https://ny.curbed.com/2018/11/28/18116459/rent-stabilization-new-york-city-council-tenant-displacement>.

⁵³ *Id.*

⁵⁴ Sadeef Ali Kully, *Track the 18 Tenant Protection Bills Now Before the City Council*, CITY LIMITS (Dec. 15, 2018), <https://citylimits.org/2018/12/05/track-the-18-tenant-protection-bills-now-before-the-city-council/>.

⁵⁵ *Id.*

housing code violations,⁵⁶ expanding mandatory sanctions (including injunctive relief) imposed upon property owners making construction permit application errors,⁵⁷ an overall false documentation crackdown,⁵⁸ and various other remedial measures.⁵⁹

Although such abuses are not perpetrated by all landlords across the board, such reports, the multitude of lawsuits and consumer advocacy groups which exist to quell tenant abuse, and the number of legislative proposals demonstrates that it is a notable and current problem. Ultimately, lawmakers repackaged the bills into one bill, the Housing Stability and Tenant Protection Act of 2019; this bill seeks to eliminate landlord-friendly loopholes that have been detrimental to residential tenants in rent-stabilized apartments throughout the State of New York, not just New York City.⁶⁰

i. *Demographic Profile of New Jersey Tenants*

In New Jersey, thirty-seven percent of household units are occupied by renters.⁶¹ In the US as a whole, thirty-four percent of household units are occupied by renters.⁶² The tenant-landlord relationship is therefore notably one that is common to many. Within the ten cities across the nation with the highest percentage of renters, six cities were located in North or Central New Jersey.⁶³ Nationwide, fifty percent of renters were under thirty years old, constituting thirty-three percent of the U.S. renter population.⁶⁴

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Nicole Brown, *New York rent laws: Cuomo signs bill to provide 'strongest tenant protections in history'*, AMNY (June 2019), <https://www.amny.com/news/rent-laws-nyc-1-32294666/>.

⁶¹ *New Jersey Residential Rent and Rental Statistics*, DEP'T OF NUMBERS, <https://www.deptofnumbers.com/rent/new-jersey/> (last visited Mar. 12, 2019).

⁶² *Quick Facts: Resident Demographics*, NAT'L MULTIFAMILY HOUSING COUNCIL, <https://www.nmhc.org/research-insight/quick-facts-figures/quick-facts-resident-demographics/> (last visited Mar. 12, 2019).

⁶³ *Top 100 cities with highest percentage of renters (pop. 50,000+)*, CITY-DATA, <http://www.city-data.com/top82.html> (last visited Mar. 30, 2020).

⁶⁴ Barker, *supra* note 43.

In Newark, New Jersey, the state’s most highly populated city,⁶⁵ the Center on Law, Inequality & Metropolitan Equity (CLiME) suggests that quantitative and qualitative data indicate that “like many U.S. cities, Newark is in the midst of an affordable housing crisis.”⁶⁶ As compared to the national population of renters, seventy-eight percent of Newark residents are renters, and sixty percent of those renters are rent burdened.⁶⁷ Worse yet, over 22,000 Newark households expend fifty percent or more of their monthly earnings on rent payments.⁶⁸

In Essex County, there is a strong correlation between wealth and percentage of owner-occupied units.⁶⁹ For example, in 2017, in Millburn, NJ, the average residential property unit was valued at \$1,287,281, and the percentage of owner occupied units was over eighty-two percent.⁷⁰ In contrast, in Newark, NJ, the average residential property unit was valued at \$196,658, and the percentage of owner occupied residencies was just over twenty-two percent.⁷¹ This trend in Essex County appears to mirror the national trend.⁷² A Harvard study on America’s rental housing population found that “renters are becoming increasingly concentrated at the lowest income level.”⁷³ New Jersey’s residential tenancy rates align with national trends.

III. TENANT-LANDLORD LAWS: NEW JERSEY, NEW YORK STATE AND NEW YORK CITY

⁶⁵ *Population of Cities in New Jersey (2020)*, WORLD POPULATION REVIEW, <http://worldpopulationreview.com/states/new-jersey-population/cities/> (last visited Mar. 30, 2020).

⁶⁶ DAVID D. TROUTT & CRISTINA GARMENDIA, HOUSING IN NEWARK RESEARCH BRIEF: STATUS AND TRENDS, 2000-2015, CTR. ON LAW, INEQUALITY & METROPOLITAN EQUITY 1, 2 (Nov. 2017).

⁶⁷ *Id.* Cf. PEW RES. CTR., *supra* note 6 (finding that thirty-seven percent of housing is occupied by renters).

⁶⁸ TROUTT & GARMENDIA, *supra* note 66, at 4.

⁶⁹ See *Housing Indicators*, NJ DATA BOOK, <https://search.njdatatool.rutgers.edu/member/datasearch.jsp> (last visited Mar. 26, 2020).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See *America’s Rental Housing 2017*, JOINT CTR. FOR HOUSING STUD. HARVARD U. (Dec. 14, 2017), <https://www.jchs.harvard.edu/research-areas/reports/americas-rental-housing-2017>.

⁷³ *America’s Rental Housing: Meeting Challenges, Building on Opportunities*, JOINT CTR. FOR HOUSING STUD. HARVARD U. 17 (Apr. 26, 2011), <http://www.jchs.harvard.edu/sites/default/files/ahr2011-3-demographics.pdf>. (“From 1990 to 2010, households with incomes below the national median accounted for [eight-four] percent of the growth in renters, while higher-income households drove virtually all of the growth in owners. Fully [sixty] percent of the increase in renters came from households in the bottom income quartile alone. By 2010, approximately [seventy] percent of renter households had incomes below the national median and more than [forty] percent had incomes in the bottom quartile.”)

The State of New Jersey and New York State have devised a tenant-landlord legal framework that is highly protective of tenants.⁷⁴ In New Jersey, some of these protective measures include required landlord disclosure of certain safety hazards, a limit on security deposits and a required return procedure, small claims court, termination and eviction rules, tenant protection against retaliation, tenant right to withhold rent and more.⁷⁵ New York State affords largely the same protections as New Jersey, as well as strong rent-control provisions, though New York State does not set a limit for security deposits.⁷⁶ New York City specifically promulgates pro-tenants rules and has vocal activists and politicians.⁷⁷

A. NEW JERSEY TENANT-LANDLORD LAWS

New Jersey's tenant-landlord laws are codified into New Jersey Annotated Statutes §§ 46:8-1 to 46:8-50; 2A:42-1 to 42-96.⁷⁸ It is important to note that the laws and regulations set forth in the state code represents minimum requirements, and certain city codes may add additional protections for tenants.⁷⁹

The Three Months Notice Rule, found in N.J.S.A. § 46:8-9, requires that landlords notify the tenant three months in advance *in writing* before the tenant's lease is terminated or the three months before the tenant must quit occupancy.⁸⁰ New Jersey's provision on waiving rights provide, pursuant to N.J.S.A. § 46:8-9.9, a waiver of rights and remedies provision found in a lease agreement is entirely

⁷⁴ See generally *Tenant Protection Unit*, NYS HOMES AND COMMUNITY RENEWAL, <https://hcr.ny.gov/tenant-protection-unit> (last visited Mar. 26, 2020); see also *Tenant Protection Laws*, NYC MAYOR'S OFFICE TO PROTECT TENANTS, <https://www1.nyc.gov/content/tenantprotection/pages/tenant-protection-laws> (last visited Mar. 26, 2020); see also *Tenants' Rights in New Jersey*, LEGAL SERVICES OF NEW JERSEY (Apr. 2014), <https://www.lsnjlaw.org/Publications/Pages/Manuals/TenantsRights.pdf>.

⁷⁵ See Marcia Stewart, *Overview of Landlord-Tenant Laws in New Jersey*, NOLO (last visited Mar. 10, 2020), <https://www.nolo.com/legal-encyclopedia/overview-landlord-tenant-laws-new-jersey.html>.

⁷⁶ See generally Nadia Balint, *Which States have the Best and Worst Law for Renters*, RENT CAFÉ BLOG (Mar. 14, 2018), <https://www.rentcafe.com/blog/renting/states-best-worst-laws-renters/>.

⁷⁷ *The Best Cities for Renters – and the Housing Laws You Need to Know*, ZIPTOPIA (Mar. 24, 2017), <https://www.zipcar.com/ziptopia/city-living/best-cities-for-renters-and-housing-laws-you-need-to-know>.

⁷⁸ See N.J.S.A. § 46.

⁷⁹ See *id.*

⁸⁰ N.J.S.A. § 46:8-9.

prohibited by law. New Jersey’s tenant-landlord code prohibits a landlord from disclosing information regarding a tenant’s status as a domestic violence survivor under N.J.S.A. § 46:8-9.11, except as required during an eviction proceeding or proceeding for unpaid rent with the consent of the tenant.⁸¹

In the case of a “holdover tenant,” a tenant remaining on the premises for one month or more than stipulated in the original lease term, N.J.S.A. § 46:8-10 presumes the landlord accepting rent has created a new month-to-month tenancy. Further illustrating the protective nature of the code, N.J.S.A. § 46:8-9.12 limits the applicability of the tenant-landlord statutory provisions to permanent residencies but makes important exemptions for certain populations.⁸² Under the provision, protections available for permanent tenants do not apply to tenants living in a residency for 125 days or less that have another residency.⁸³ However, migrant farm workers are still covered by the provision.⁸⁴ Further, the provision places the burden on the landlord to prove that the residential use is solely seasonal.⁸⁵

N.J.S.A. § 46:8-21.1 requires the landlord to return the tenant’s security deposit, plus any interest accrued, within thirty days of the termination of the tenant’s lease.⁸⁶ If the tenant is displaced by an emergency event, such as a fire, flood, or safety evacuation, or if a public official posts a notice prohibiting occupancy, or where a building inspector certified that displacement will continue seven days or more, the landlord must return the security deposit plus interest within five days.⁸⁷ Violation of this provision may result in a civil judgment against the landlord for double damages and reasonable attorneys’ fees in favor of the tenant.⁸⁸ Even more protective is N.J.S.A. § 46:8-21.5, which provides that tenants receiving financial assistance through a state or federal program are not required to file a

⁸¹ N.J.S.A. § 46:8-9.11 (A tenant’s disclosure of his or her status as a domestic violence survivor is frequently used as a defense for unpaid rent); *see generally Housing Rights of Domestic Violence Survivors*, NAT’L HOUSING L. PROJECT (Jan. 2013), [http://nhlp.org/files/Domestic violence housing compendium FINAL7.pdf](http://nhlp.org/files/Domestic%20violence%20housing%20compendium%20FINAL7.pdf).

⁸² N.J.S.A. § 46:8-9.12 (2013).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ N.J.S.A. § 46:8-21.1 (2013).

⁸⁷ *Id.*

⁸⁸ *Id.*

court action to recover their deposit—instead, the return of the deposit in case of a violation is automatic.⁸⁹

The State of New Jersey’s statutory code has a unique protective measure for tenants, entitled the Truth-in-Renting Act.⁹⁰ The Truth-in-Renting Act requires landlords to give their tenants a copy of a booklet entitled “Truth in Renting.”⁹¹ The booklet contains comprehensive information about leases, including rules of security deposits, discrimination, right of entry, consumer fraud protections, public housing leases and more.⁹² The booklet also contains an exhaustive description of habitability requirements, including heating, health, safety and maintenance standards, inspection and enforcement, carbon monoxide and smoke detector §requirements, lock requirements and more.⁹³ Importantly, the booklet outlines the tenant’s rights regarding the “repair and deduct” and “rent withholding” remedies available to the tenant.⁹⁴ The repair and deduct provision is a self-help remedy allowed by the New Jersey Supreme Court which enables a tenant to withhold rent or deduct rent if a material violation is occurring in the residency.⁹⁵ For example, if the heat has stopped working and the tenant informs the landlord and the landlord fails to respond within a reasonable period of time, the tenant may withhold rent or repair the heating problem and deduct the cost of the repair from the monthly rent payment.⁹⁶

⁸⁹ N.J.S.A. § 46:8-21.5 (2013).

⁹⁰ Truth in Renting Act, N.J.S.A. § 46:8-43 through 50 (1976).

⁹¹ *Id.*

⁹² N.J. DEP’T OF CMTY. AFFAIRS, TRUTH IN RENTING: A GUIDE TO THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL TENANTS AND LANDLORDS IN NEW JERSEY 1-38 (10th ed. 2010).

⁹³ *Id.*

⁹⁴ *Id.* at 21.

⁹⁵ *Id.*

⁹⁶ *Id.* at 20.

The Truth-in-Renting booklet is distributable both in Spanish and in English.⁹⁷ Failure on the part of the landlord to distribute the booklet for each lease term can result in a penalty of \$100 for each offense.⁹⁸

B. NEW YORK TENANT-LANDLORD LAWS

New York State's tenant-landlord laws are similar to New Jersey's but not identical. N.Y. Real Prop. Law § 223-b provides that landlords may not retaliate against tenants for a good faith complaint made by the tenant, nor may the landlord substantially alter material terms of the tenancy.⁹⁹ An action against a tenant which occurs soon after a complaint lodged by the tenant is subject to a rebuttable presumption that the landlord is acting in retaliation; a substantiated violation will result in civil damages and other appropriate injunctive relief against the landlord.¹⁰⁰

New York State does not allow a tenant to sublease or assign his or her lease without the written consent of the owner, and the consent of the landlord can be withheld unconditionally.¹⁰¹ However, if a landlord refuses to grant consent, the tenant has a remedy; the tenant must give the landlord thirty days notice that he, she or they wishes to dissolve the lease, and the landlord must release the tenant.¹⁰² This is a fairly progressive measure because it gives the tenant some leverage against unreasonable withholding of consent to assign or sublease. In contrast, New Jersey's landlord-tenant laws require a tenant to defer to the lease, rendering this remedy is unavailable to New Jersey tenants.¹⁰³

⁹⁷ *Id.* at 36.

⁹⁸ *Id.* at 1.

⁹⁹ N.Y. REAL PROP. LAW § 223-b.

¹⁰⁰ *Id.*

¹⁰¹ N.Y. REAL PROP. LAW § 226-b. Prohibition of subletting or assignment of a residential lease without consent from the owner is in lock-step with the vast majority of state property laws. Typically, a tenant must request written consent from the property owner. *See generally Michael Finder et al., Your Rights to Sublet, Share, and Assign Apartments*, TENANT.NET, <http://www.tenant.net/tengroup/Metcounc/Mar96/sublet.html> (last visited March 12, 2020).

¹⁰² *Id.*

¹⁰³ *Lease Information Bulletin*, NEW JERSEY DEP'T OF CMTY. AFF. (May 2010), https://www.state.nj.us/dca/divisions/codes/publications/pdf_lti/lease.pdf. Subleasing and assignment is not specifically provided for in New Jersey's tenant-landlord code, so the tenant must refer back to the lease agreement. If the lease agreement does not prohibit

New York landlord-tenant laws prohibit a landlord from discriminating against a tenant based on the tenant's status as a domestic violence survivor.¹⁰⁴ This provision goes a step further than the New Jersey provision tackling domestic violence issues; the New Jersey provisions require that the landlord not disclose status as a domestic violence survivor (except under certain specified situations) but do not require landlords to refrain from discriminating based on the tenant's status as a domestic violence survivor.¹⁰⁵ Another novel aspect of New York law is N.Y. Real Prop. Law § 227-c, which grants a tenant that has been classified by a court as a domestic violence victim permission to terminate the lease agreement to avoid an abuser.¹⁰⁶

New York's law regarding holdover tenants has the same substance as the New Jersey law, but its statutory construction is more protective of tenants than the New Jersey law, N.J.S.A. §46:8-10.¹⁰⁷ N.Y. Real Prop. Law § 227-c disallows a landlord to automatically renew a tenant's lease term if the tenant holds over from the original lease; the landlord must commence proceedings against the tenant or the tenancy is converted to a month to month tenancy. Also like New Jersey's tenant-landlord code, New York law abides by the implied warranty of habitability, statutorily prescribed by N.Y. Real Prop. Law § 235-b.¹⁰⁸

This is just scratching the surface of New York State's comprehensive tenant-landlord laws. The entire code of New York State's landlord-tenant laws can be found in various state statutes

subleasing or assignment, the tenant may find a new tenant but remains responsible for the residency until the lease term expires. *Id.*

¹⁰⁴ N.Y. REAL PROP. LAW § 227-d.

¹⁰⁵ See N.J.S.A. § 46:8-9.11. Although some state statutes similar to New York provide that landlords may not discriminate against domestic violence survivors, many states (including New Jersey) have not yet passed such a provision. Survivors of domestic violence face a higher rate of homelessness because survivors can be evicted for involvement in domestic disturbances. See Lisa M. Schaeffer, *Can Tenants Be Evicted for Domestic Violence?*, FINDLAW (Nov. 7, 2018), https://blogs.findlaw.com/law_and_life/2018/11/can-tenants-be-evicted-for-domestic-violence.html/.

¹⁰⁶ N.Y. REAL PROP. LAW § 227-c.

¹⁰⁷ N.J.S.A. § 46:8-10.

¹⁰⁸ N.Y. REAL PROP. LAW § 235-b. "A holdover tenant is a renter who remains in a property after the expiration of the lease. If the landlord continues to accept rent payments, the holdover tenant can continue to legally occupy the property, and state laws and court rulings determine the length of the holdover tenant's new rental term." James Chen, *Holdover Tenant*, INVESTOPEDIA.ORG (Oct. 10, 2019), <https://www.investopedia.com/terms/h/holdover-tenant.asp>.

including N.Y. Real Prop. Law §§ 220 to 238; Real Prop. Acts §§ 701 to 853; Mult. Dwell. Law (all); Mult. Res. Law (all); Gen. Oblig. Law §§ 7-103 to 7-109.¹⁰⁹

C. NEW YORK CITY TENANT-LANDLORD LAWS

New York State’s tenant-landlord laws are comprehensive, but the City of New York, the most populous city in the country, goes a step further to address challenges faced by tenants. The City of New York has a population of eight and a half million people, and nearly sixty-three percent of those housing units are rentals.¹¹⁰ Further, around forty-four percent of these rental units are rent-stabilized.¹¹¹ Rent stabilization is a government classification which applies to rental units with a rent below \$2,500 per month, and rent-stabilized apartments may only increase the rent each year by a small percentage.¹¹² Some rental units are also rent-controlled, but rent-controlled units account for less than two percent of the total New York City housing stock.¹¹³

New York City’s website publicizes tenant’s rights information vigorously, both online and through advertising campaigns on public transit and throughout the city. Similar to the Truth-in-Renting, New York City publishes “the ABCs of Housing” informational literature.¹¹⁴ The “ABCs of Housing” specifies conditions (heat and hot water, carbon monoxide and smoke detectors, locks, lead-based paint, mold, pests, window guards) required in a rental, the complaint and enforcement process, behavior that constitutes harassment of tenants and other issues, such as permissible and

¹⁰⁹ *New York Landlord Tenant Law*, AMERICAN APARTMENT OWNERS ASSOCIATION, <https://www.american-apartment-owners-association.org/landlord-tenant-laws/new-york/> (last visited Apr. 1, 2020).

¹¹⁰ *Why It’s So Hard to Find an Apartment? The NYC Vacancy Rate Can Explain*, NAKED APARTMENTS (Oct. 1, 2018), <https://www.nakedapartments.com/blog/nyc-vacancy-rate/>.

¹¹¹ Mariela Quintana, *What You Need to Know about Rent Control and Rent Stabilization in NYC*, NAKED APARTMENTS (June 7, 2018), <https://www.nakedapartments.com/blog/rent-control-rent-stabilization-nyc/>.

¹¹² *Id.* For more information on the history and mechanics of rent-stabilization, view the City of New York’s publication. See Timothy Collins, *An Introduction to the NYC Rent Guidelines Board and the Rent Stabilization System*, NYC RENT GUIDELINES BOARD (Jan. 2020), <https://rentguidelinesboard.cityofnewyork.us/about/an-introduction-to-the-nyc-rent-guidelines-board-and-the-rent-stabilization-system/>.

¹¹³ Quintana, *supra* note 111. (Rent controlled housing in New York City is essentially aging out mainly because in order for an apartment to be classified as rent-controlled, it must have been built before 1947 and have been occupied by the same family since 1971).

¹¹⁴ *ABCs of Housing*, NYC DEP’T OF HOUS. PRESERVATION & DEV. (May 2017), <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/abcs-of-housing.pdf>.

impermissible rent increases.¹¹⁵ The informational booklet is available in English, Spanish, Chinese, Haitian, Creole, Korean, Arabic and Russian.¹¹⁶ In addition, the website offers accessible descriptions of inspection requirements, housing violations, and user-friendly methods to file a complaint such as a 311 texting service.¹¹⁷ The website also provides information on the steps a tenant should take if they face eviction proceedings, and provides information about legal services for indigent tenants.¹¹⁸

In fact, the City of New York is the first place in the nation to pass a law promising legal representation to tenants facing eviction.¹¹⁹ The amendment to the city administrative code was passed in August 2017 and aims to level the playing field in housing court, where tenants had legal representation in housing court in only one-to-ten percent of cases until 2014.¹²⁰ In contrast, ninety percent of landlords had some legal representation in housing court.¹²¹ Often in nonpayment eviction proceedings, tenants may have a valid defense, but without legal representation and under the quick timeline of eviction proceedings, they are unable to successfully use these defenses.¹²² The new law strives to minimize illegal evictions throughout the city.¹²³ Other cities such as San Francisco, Boston, Philadelphia, and Washington D.C. are now considering enacting similar provisions, being referred to informally as “civil *Gideon*” laws.¹²⁴ However, the implementation of the program is expensive, with New York City committing \$155 million over five years.¹²⁵ Housing rights activists contend that the

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Report a Complaint*, NYC DEP'T OF HOUS. PRESERVATION & DEV., <https://www1.nyc.gov/site/hpd/services-and-information/report-a-housing-complaint.page> (last visited Mar. 10, 2019).

¹¹⁸ NYC DEP'T OF HOUS. PRESERVATION & DEV., *supra* note 114.

¹¹⁹ Kriston Capps, *New York City Guarantees a Lawyer to Every Resident Facing Eviction*, CITYLAB (Aug. 14, 2017), <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

cost of the program will be offset by corresponding decreases in expenses for homelessness shelters and other emergency housing programs.¹²⁶

IV. RESIDENTIAL LEASES: ARE THEY IN COMPLIANCE WITH PRINCIPLES OF CONTRACT LAW?

Generally, contracts of adhesion are not unenforceable on their face.¹²⁷ A contract of adhesion is defined as a contract in which “one party has substantially more power than the other in creating the contract.”¹²⁸ An adhesion contract is presumptively valid unless it is unconscionable for the non-bargaining party to sign it.¹²⁹ Lease agreements serve as examples of a widespread use of a typically valid and enforceable adhesion contract. However, while these types of contracts may still be valid and enforceable, general contract principles interpret adhesion contracts against the drafter.¹³⁰

A. WIDESPREAD USE OF BOILERPLATE / STANDARD FORM CONTRACTS

A commercial lease is approached much like a business transaction contract.¹³¹ The parties meet, an offer is extended, the offeree accepts, consideration and mutual consent must be established and the agreement is then reduced to writing.¹³² Each clause of the lease agreement is negotiated by the parties, allowing either the offeree or the offeror the opportunity to object and/or renegotiate terms.¹³³ This is not the case in a residential lease contract.¹³⁴ Unlike commercial leases, a residential

¹²⁶ *Id.*

¹²⁷ *The Enforceability of Adhesion Contracts*, LAW SHELF, <https://lawshelf.com/videos/entry/the-enforceability-of-adhesion-contracts> (last visited March 11, 2019).

¹²⁸ Julia Kagan, *Adhesion Contract*, INVESTOPEDIA (Mar. 4, 2018), <https://www.investopedia.com/terms/a/adhesion-contract.asp>. Adhesion contracts are also often referred to as standard form contracts or “boilerplate” contracts. This note will refer to the agreements as standard form contracts.

¹²⁹ LAW SHELF, *supra* note 127.

¹³⁰ Dennis Crouch, *Interpreting Claims Against the Drafter*, PATENTLYO (July 29, 2014), <https://patentlyo.com/patent/2014/07/interpreting-against-drafter.html>.

¹³¹ *See generally Commercial Lease Agreement*, LAWDEPOT, <https://www.lawdepot.com/contracts/commercial-lease-agreement/?loc=US-.XIwhxBNKjGI> (last visited March 4, 2019).

¹³² *See generally Elements of a Contract*, JUD. EDUC. CTR., <http://jec.unm.edu/education/online-training/contract-law-tutorial/contract-fundamentals-part-2> (last visited Mar. 11, 2020).

¹³³ *Id.*

¹³⁴ *See generally* Meirav Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market*, 9 J. OF LEGAL ANALYSIS 1 (2017).

landlord has the advantage in nearly every step of the process in a residential lease agreement.¹³⁵ In a standard transaction, there is little or no negotiation between the parties.¹³⁶ The landlord supplies a standard form contract and typically, the tenant must take it or leave it.

Standard form contracts, while commonplace and used in almost all residential lease transactions, create a multitude of concerns from a regulatory perspective.¹³⁷ Moreover, whereas consumers infrequently read the contract in its entirety, the standard form contract may contain one-sided terms.¹³⁸ While courts, regulators and realtors alike know that consumers often fail to read consumer contracts (and even if consumers read contracts in full, they tend to have difficulty fully comprehending confusing terms), these contracts continue to be used extensively and are enforceable unless they contain invalid terms.¹³⁹

Specifically, tenant leases may contain terms that impermissibly restrict the tenant's rights and remedies, but tenants often assume the terms to be fully binding.¹⁴⁰ Sellers (often including landlords) devise consumer contracts which create a presumption of enforceability, and "may use unenforceable and misleading terms if she realizes that consumers might be misled into foregoing legal rights and remedies, resulting in gain to the seller."¹⁴¹

i. *Unnegotiated contract, with one sophisticated party*

Boilerplate agreements are common in residential lease agreements.¹⁴² It has been posited that a familiar trait between boilerplate lease agreements is in the "blank space" of the contract.¹⁴³ Pre-printed boilerplate agreements may omit affirmative duties such as "requir[ing] a landlord to maintain

¹³⁵ Ira Meslik, *Common Boilerplate Provisions in Real Property Leases: A Commentary*, MEISLIK & MEISLIK (Apr. 1, 2008), http://www.meislik.com/articles/common_boilerplate_provisions_in_real_property_leases_a_commentary.

¹³⁶ *Id.*

¹³⁷ See generally Furth-Matzkin, *supra* note 134.

¹³⁸ *Id.* at 5.

¹³⁹ *Id.* at 2.

¹⁴⁰ *Id.* at 3.

¹⁴¹ *Id.* at 6.

¹⁴² Meslik, *supra* note 135.

¹⁴³ *Id.*

the property, provide services or carry insurance.”¹⁴⁴ By using a boilerplate agreement, a sophisticated player (i.e. New Jersey Association of Realtors (NJAR)) is able to create an agreement which is highly beneficial to the landlord, sometimes at the detriment of the tenant. Tenants may not realize that they can negotiate, or may be apprehensive to attempt to negotiate, a lease agreement in a highly competitive affordable housing market.

ii. ***Supply and Demand: How the Oversaturated and Competitive Affordable Housing Market Curtails Tenants’ Bargaining Power***

The problem presented by supply and demand in the rental housing market has perpetuated for decades.¹⁴⁵ As discussed, lack of affordable housing has deepened as populated areas have become increasingly urbanized. Landlords discourage additional regulations, citing free-market ebbs and flows as well as supply and demand as promoting as self-regulation.¹⁴⁶ This theory has not come to fruition because housing construction takes years and regardless, the free market tends to replace or build new housing that is not affordable.¹⁴⁷ Moreover, public housing has been demolished at an alarming rate in the 2000s and many units are not replaced.

Edward C. Wallace, a New York Times columnist, former legal aid attorney and housing specialist, theorizes that the solution to the dearth of affordable housing and rent inflation is not additional government regulation, but “[r]ather, to complete the regulatory system, we must equalize the bargaining power: Let the parties, not the government, set the terms of the rental agreement, while government sets outside limits.”¹⁴⁸ Wallace proposes that tenants level the playing field by engaging in collective bargaining agreements, similar to labor unions.¹⁴⁹ Under a collective bargaining system,

¹⁴⁴ *Id.*

¹⁴⁵ Edward C. Wallace, *Giving Tenants Power*, N.Y. TIMES (Jan. 5, 1981), <https://www.nytimes.com/1981/01/05/opinion/giving-tenants-power-by-edward-c-wallace.html>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

tenants and landlords would no longer be required to appear in court whenever a tenant-landlord dispute arises because a tenant association and landlord association would come to a solution.¹⁵⁰

Some cities throughout the US require mediate dispute resolutions between tenant and landlord. For example, the City of Palo Alto, located in the San Francisco Bay Area, has become a hub for companies such as Tesla, HP and other technology companies.¹⁵¹ Due to the influx of high-paying jobs, Palo Alto and Greater San Francisco have experienced a housing shortage.¹⁵²

Acknowledging this shortage, the City of Palo Alto recognized:

There is an imbalance between the supply of and demand for rental housing in the City of Palo Alto. The imbalance is the result of both a shortage of rental housing and overwhelming market demand. The imbalance between supply and demand creates an imbalance of bargaining power between landlords and tenants. As a result of these market and bargaining power imbalances, Palo Alto tenants may be unwilling or unable to assert their legal rights and other concerns to their landlords.¹⁵³

Accordingly, the City of Palo Alto passed an ordinance which requires tenants and landlords to enter into mandatory mediated dispute resolution when a dispute arises.¹⁵⁴ In contrast, cities in New York and New Jersey have not yet enacted such an ordinance, and tenants are still forced to represent themselves in housing court to resolve most disputes.

Various courts have agreed that residential tenants and landlords have a tendency to enter into contracts with unequal bargaining power.¹⁵⁵ In *Ransburg v. Richards*, a landlord being sued by a tenant was denied summary judgment when the court found the exculpatory clause in the tenant's residential

¹⁵⁰ *Id.*

¹⁵¹ See generally Melia Robinson, *San Francisco is still the best city in the world for innovation – here are the 6 cities that threaten to usurp its position of power*, BUSINESS INSIDER (June 2, 2018, 8:45 AM), <https://www.businessinsider.com/san-francisco-best-city-for-innovation-2018-5>.

¹⁵² Leanna Garfield, *The San Francisco Bay Area's housing crisis is so out of control, a median-priced home costs \$820,000 – here are 5 ways to help fix the problem*, BUSINESS INSIDER (June 6, 2018, 9:33 AM), <https://www.businessinsider.com/san-francisco-affordable-housing-solutions-2018>.

¹⁵³ *Ordinance of the City of Palo Alto*, CITY OF PALO ALTO (Jan. 3, 2002), <https://www.cityofpaloalto.org/civicax/filebank/documents/6042>.

¹⁵⁴ *Id.*

¹⁵⁵ Daniel D. Barnhizer, *Inequality of Bargaining Power*, 76 U. COLO. L. REV. 139, 170 (2005).

lease created unequal bargaining power.¹⁵⁶ The court found “a residential landlord has a decisive advantage in bargaining strength against any member of the public who seeks its services.”¹⁵⁷ Applying this logic, the court found the exculpatory clause broadly affected unsophisticated residential tenants, and the exculpatory clause was stricken because it was against public policy and unconscionable.¹⁵⁸ Similarly, jurisdictions in Pennsylvania have found that “[t]he tenant has no bargaining power and must accept his landlord's terms” and thereby, the lease may lack a meeting of the minds, essentially creating an adhesion contract.¹⁵⁹ Further, the court proclaimed “a prospective tenant for an apartment being unable to bargain away an exculpatory clause, is not [a free bargaining agent].”¹⁶⁰ Given the discussed contract formation issues, mutual assent is virtually not possible in residential tenancies.

iii. *A Closer Look: In-Depth Reading of New Jersey Realtor Association’s Boilerplate Lease Agreement*

By and large, a New Jersey tenant will receive a standard form contract which was certified by the New Jersey Association of Realtors (NJAR). NJAR is a lobbying group with 55,000 members who are “involved in all aspects of the residential and commercial real estate industries.”¹⁶¹

NJAR has a standard form contract which many New Jersey realtors chose to utilize when executing leases with residential tenants.¹⁶² The standard form contract is finalized three business days following signature by both parties. The document defines the lease term, agreed upon rent, the standard procedure for a security deposit, late fees, duties of the tenant and landlord and other contractual terms.¹⁶³

¹⁵⁶ *Ransbuhrg v. Richards*, 770 N.E.2d 393, 396 (Ind. Ct. App. 2002).

¹⁵⁷ *Id.* at 401.

¹⁵⁸ *Id.* at 404.

¹⁵⁹ *Barnhizer*, *supra* note 155, at 170 (quoting *Feld v. Meriam*, 4 Phila. Co. Rptr. 511, 522 (Pa. Ct. Com. Pl. 1980)).

¹⁶⁰ *Id.*

¹⁶¹ *About New Jersey Realtors*, N.J. ASS’N OF REALTORS, <https://www.njrealtor.com/about/> (last visited Apr. 1, 2020).

¹⁶² *Standard Form of Residential Lease*, N.J. ASS’N OF REALTORS, <http://www.shorehomes.com/images/form%20125%20-%20residential%20lease%20-%20pdf.pdf> (last visited Apr.1, 2020).

¹⁶³ *See generally id.*

The standard form contract places a significant amount of duties on the tenant residing in the property. First, in clause 8, the standard form contract permits a landlord to charge additional rent to the tenant if the landlord performs obligations listed under clause 15, and allows the landlord to charge the tenant for any attorneys' fees incurred as a result of tenant's failure to pay additional rent.¹⁶⁴ Clause 15 classifies various surprising obligations as tenant's obligations including:

c) cut[ting] the grass and maintain[ing] the shrubbery, f) keep[ing] the furnace clean, and regularly chang[ing] the furnace filters, r) keep[ing] the walks and driveway free from dirt, debris, snow, ice and any hazardous objects, [and] (s) comply[ing] with such rules and regulations that may be published from time to time by the Landlord.”¹⁶⁵

A tenant that has signed this contract is therefore subject to any additional rules and regulations asserted by the landlord under clause 15(f).¹⁶⁶

In contrast, the express obligations of the landlord are limited to “heating, plumbing and electrical systems” to be repaired “within a reasonable time.”¹⁶⁷ Under clause 17, the landlord may access the leased property whenever he or she wishes if the tenant does not renew the lease agreement for the next term.¹⁶⁸ Furthermore, the tenant is not permitted to assign or sublet the premises without express written permission from the landlord.¹⁶⁹ Allowance to assign or sublet the property is made in the “[l]andlord's sole and absolute discretion.”¹⁷⁰

In addition, the standard form contract contains a “no waiver” clause, which states that the landlord's failure to enforce or collect on tenant's obligations defined throughout the agreement shall not prevent the landlord from enforcing the responsibilities in the future.¹⁷¹ Last, the contract requires

¹⁶⁴ *Id.* at 2.

¹⁶⁵ *Id.* at 3.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 4.

the tenant to sign a “lead-based paint document acknowledge” to complete the standard form contract.¹⁷²

The standard form contract is, as it sounds, a boilerplate document given to prospective tenants. The contract terms are not negotiated by the parties, but instead are supplied to the prospective tenant. Failure to sign the contract could result in the tenant losing the property.

V. THE IMPLIED WARRANTY OF HABITABILITY AND ITS ACTUAL USAGE

The Implied Warranty of Habitability (implied warranty) is a legal doctrine which mandates that landlords be required to keep their tenant-occupied premises in habitable condition.¹⁷³ Nearly every state has adopted the implied warranty in some form.¹⁷⁴ The implied warranty allows a tenant to withhold rent, pay for repairs themselves and deduct from monthly rent payment, sue the landlord or break the lease without liability for future rent.¹⁷⁵ The implied warranty bestows a significant amount of rights upon tenants, but its success rate has not yet been proven.

Recently, Seton Hall Law Professor Paula Franzese investigated the use of the IWH in Essex County, New Jersey. In 2014, the implied warranty was only asserted in eighty instances as a defense in eviction proceedings, although *forty-thousand* eviction proceedings occurred. Franzese summarized the problem, stating that “[t]he warranty is seldom asserted, even in congested venues known to be rife with substandard rental housing.”¹⁷⁶ In the City of Newark specifically, seventy-seven percent of the city’s residents are renters.¹⁷⁷

¹⁷² *Id.* at 6.

¹⁷³ Marcia Stewart, *What is the Implied Warranty of Habitability?*, NOLO, <https://www.nolo.com/legal-encyclopedia/what-the-implied-warranty-habitability.html> (last visited March 24, 2020).

¹⁷⁴ David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 393 (2011).

¹⁷⁵ Stewart, *supra* note 75.

¹⁷⁶ Paula A. Franzese, Abbott Gorin, & David J. Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS L. REV. 1, 3-4 (2016).

¹⁷⁷ *Id.* at 5.

Although the implied warranty was rarely raised, when it was raised, its success rate was high. However, various oppressive barriers prevent residential tenants from utilizing the implied warranty when faced with eviction or another residential problem.¹⁷⁸ Some of those problems include excessively stringent deposit requirements, “the absence of centralized databases for courts and rent subsidizing agencies to use when making decisions regarding substandard premises' eligibility for continued government subsidies in view of their given defects, the subversive practice of ‘tenant blacklisting,’ the scarcity of effective assistance of counsel” and last, “tenants' lack of awareness of their basic rights.”¹⁷⁹ A major challenge faced by tenants in substandard housing is access to effective assistance of counsel.¹⁸⁰ Currently, few resources are devoted to representation of indigent tenants facing eviction or housing abuses.¹⁸¹ The disparity in legal representation between landlords and tenants is astounding; in various statistical studies, landlords in eviction proceedings were represented by counsel between eighty-five to ninety-seven percent of the time, whereas tenants were presented by legal counsel only in between five to fifteen percent of proceedings.¹⁸²

Franzese theorizes that, with the proper vigilance from “housing courts, housing inspectors, [] government rent-subsidized agencies” and increased efforts from “public and private sector lawyers, the organized bar, law schools, and tenant empowerment groups,”¹⁸³ the implied has potential to become an actualized promise.

VI. WRONGFUL WITHHOLDING OF SECURITY DEPOSITS

Often, residential tenants are required by landlords to pay a security deposit before moving into the unit.¹⁸⁴ The security deposit generally ranges from one month’s rent to one and a half month’s

¹⁷⁸ *Id.* at 6.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 31.

¹⁸¹ *Id.*

¹⁸² *Id.* at 13.

¹⁸³ *Id.* at 43.

¹⁸⁴ *Understanding Your Security Deposit*, LEGAL SERVICES OF NEW JERSEY (Dec. 18, 2015), <https://www.lsnjlaw.org/Housing/Landlord-Tenant/Security-Deposits/Pages/Understanding-Your-Security-Deposit.aspx>.

rent of the entire apartment unit.¹⁸⁵ Landlords may deduct money from the security deposit for damages perpetrated by the tenant.¹⁸⁶ Further, a landlord is required to keep the security deposit in an escrow account which accrues interest.¹⁸⁷ In New Jersey, landlords are required to return the tenant's security deposit within thirty days of the tenant's vacation of the premises. Failure to comply with this rule may result in double damages and attorneys' fees for the tenant.¹⁸⁸ The deposit with interest is due to the tenant. New York has adopted similar rules; the landlord must return the deposit to the tenant within forty-five days.¹⁸⁹ After the forty-five day period, the landlord's withholding of the deposit is considered unreasonable.¹⁹⁰ Tenants may be awarded treble damages in New York, if they can demonstrate that their landlord wrongfully withheld their security deposit.¹⁹¹

Although these protective measures exist, tenants might not widely utilize the protections for a variety of reasons. First, a tenant may not be informed about the protections. Second, a tenant may be unable to hire an attorney to represent themselves and might not have the confidence or the time to navigate the judicial system. Last, a tenant may be fearful of a countersuit or becoming blacklisted by local landlords if they attempt to enforce these measures. Protective laws exist due to a recognition of the problem, but as of yet, few tools are in place to allow tenants to benefit from these measures.

VII. CLASS ACTION CONSUMER FRAUD LITIGATION AGAINST NOTORIOUS SLUMLORDS

¹⁸⁵ Under New Jersey law, the maximum security deposit a landlord can collect is one and a half month's rent. *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Jay Romano, *Suing to Recover a Security Deposit*, N.Y. TIMES (Aug. 26, 2007), <https://www.nytimes.com/2007/08/26/realestate/26qa-002.html>. According to the director of litigation for New Jersey Legal Services, a landlord must return the tenant's security deposit within thirty days or alternatively, provide an itemized explanation of the reason behind the landlord's withholding of the security deposit. The tenant in this action may ask for double the amount of the security deposit being withheld, although the award is at the discretion of the court. Even if the tenant loses the action, the court is not likely to charge the tenant bringing the action the landlord's attorneys' fees.

¹⁸⁹ Andrew Fullett, *The Landlord-Tenant Environment in New York*, AVAIL (Feb. 20, 2020), <https://www.avail.co/education/laws/new-york-landlord-tenant-law>.

¹⁹⁰ *Id.*

¹⁹¹ Erin Eberlin, *Tenants' Security Deposit Rights in New York*, THE BALANCE (July 9, 2018), <https://www.thebalancesmb.com/new-york-security-deposit-law-2125083>; Legal Assistance of Western New York, Inc., *Security Deposits*, LAW NY (July 3, 2019), <https://www.lawny.org/node/72/security-deposits>.

The State of New Jersey has a multitude of laws and regulations in place to protect aggrieved consumers. Recently, the New Jersey Supreme Court allowed New Jersey renters to pursue a consumer fraud action against their landlord.¹⁹² In *Green v. Morgan Properties*, the New Jersey Supreme Court certified a class of renters contesting an attorney's fee provision.¹⁹³ Ultimately, the Court dismissed the complaint with prejudice because it found that the plaintiff class failed to plead the complaint with sufficient particularity as required by New Jersey Court Rule 4:6-2(e).¹⁹⁴ However, the Court's granting of class certification to the plaintiffs signaled a willingness to permit such actions against landlords.¹⁹⁵ In *Heyert v. Taddese*, a plaintiff tenant brought an action against his landlord in Hudson County, alleging the landlord violated the Consumer Fraud Act (CFA) by charging rent in excess of local rent control laws.¹⁹⁶ The Court denied the landlords' motion for summary judgment and found that the finding of a CFA violation was proper.¹⁹⁷ This development is important, because it shows that New Jersey Courts have shown some willingness to certify a class of aggrieved tenants; class action lawsuits could become a viable method of enforcing tenant landlord laws.

VIII. CONCLUSION

Tenant's rights are an increasingly important legal issue to consider, especially as the percentage of renters in the United States remains high or increases. New Jersey and New York specifically boast tenant-landlord laws that are protective of tenants, yet tenants often remain unable to defend themselves in housing court, against impermissible rent increases, or in the face of poor housing conditions. The oversaturated housing market, plus ever increasing rents in metropolitan areas which create a rent burden on lower-income individuals, curtails a tenant's leverage in the

¹⁹² Jennifer L. Alexander, Esq., *NJ Supreme Court Finds Consumer Fraud, Negligence Causes of Action Exist In Class Action Against Landlords*, GRIFFIN ALEXANDER P.C. (Dec. 11, 2013), <http://www.lawgapc.com/blog/nj-supreme-court-finds-consumer-fraud-negligence-c>.

¹⁹³ *Green v. Morgan Properties*, 215 N.J. 431, 436 (2013).

¹⁹⁴ *Id.* at 456.

¹⁹⁵ ALEXANDER, *supra* note 192.

¹⁹⁶ *Heyert v. Taddese*, 431 N.J. Super. 388, 411 (App. Div. 2013).

¹⁹⁷ *Id.* at 404.

transaction. The residential leases signed by many tenants create various contract formation issues which must be considered more seriously by courts.

Landlord violations, rights afforded by the implied warranty of habitability and contract defects could create potentially viable legal defenses for tenants in housing court, but many tenants are unable to afford effective assistance of counsel to properly utilize these defenses. Tenant class actions, creating the threat of litigation and double or triple damages, could force landlords to conform more closely with tenant landlord laws. To address the challenges faced by low and moderate income tenants, action must be twofold; First, state and local government agencies must vastly improve enforcement processes against non-compliant landlords, and second, the state must mandate a right to counsel for tenants facing housing proceedings. The COVID-19 pandemic has created a unique housing situation that will likely lead to a further increase in renting and eviction; while many states have instituted temporary moratoriums on evictions, when those moratoriums are lifted, there will likely be a cascade of evictions because so many Americans have suffered joblessness.¹⁹⁸ The effectiveness of protective housing laws, tools and defenses discussed throughout this paper will soon be put to the test.

¹⁹⁸ Chris Roberts, *The next COVID-19 crisis: The coming tidal wave of evictions*, CURBED (May 1, 2020, 2:30 PDT), <https://sf.curbed.com/2020/4/20/21224360/covid-19-evictions-eviction-renters-landlords-coronavirus-california>.