ASSEMBLY, No. 3108

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
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SYNOPSIS

Codifies and enhances use of breach of implied warranty of habitability as defense to certain eviction actions.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/18/2020)

AN ACT concerning certain defenses to evictions from residential rental property and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. In every written or oral lease or rental agreement for residential premises, the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous, or detrimental to their life, health, or safety. The covenant and warranty provided for in this section, also referred to as the implied warranty of habitability or covenant to repair, shall be interpreted broadly to afford tenants and residents all protections afforded by New Jersey Court decisions, as expanded under this section.

b. A tenant may assert a breach of the implied warranty of habitability or covenant to repair as a defense and set-off in a landlord's action for non-payment of rent. If the breach is proven, the tenant's rental obligation shall be reduced to the reasonable rental value of the property in its imperfect condition during the period of occupancy, and the tenant shall be entitled to an offset in the amount of the cost of all repairs made by the tenant which the landlord was obligated, but failed to make.

c. (1) A tenant who asserts a breach of the implied warranty of habitability or covenant to repair as a defense shall not be required to deposit outstanding rent with the court, except as otherwise required under this subsection.

(2) If a tenant asserts a breach of the implied warranty of habitability or covenant to repair as a defense in an action for the non-payment of rent, the court shall order an inspection of the premises by a code enforcement official of the municipality in which the residence is located. Within 30 days of the date of the court order, the code enforcement official shall inspect the premises and deliver to the court a written report identifying any code violations and describing the extent to which the health or safety of residents are impaired or threatened by the condition of the premises. The court, in its discretion, may extend the time within which a code official shall deliver a report under this paragraph.

(3) Upon review of the report, and after providing the parties notice and an opportunity to be heard, the court may, for good cause shown:

(a) order the tenant to deposit any amount of the rent owed with the court until final judgment is entered;

(b) transmit a copy of the report, along with any additional information the court, in its discretion, determines to be pertinent, to the Division of Codes and Standards in the Department of Community Affairs; and

(c) transmit a copy of the report, along with any other information the court, in its discretion, determines to be pertinent, to any agency that administers a State or federal housing subsidy with regard to the residential property that is the subject of the action.

(4) Notwithstanding any other law or regulation to the contrary, the court may, after affording the parties notice and an opportunity to be heard and for good cause shown, issue an order suspending the payment of any State or federal housing subsidy, to the extent permitted by federal law, with regard to the residential property that is the subject of the action until remediation of any code violation or until further order of the court.

d. All relevant factors, including but not limited to the following factors, shall be considered in determining whether a landlord breached the implied warranty of habitability or covenant to repair:

(1) a violation of any applicable housing code or building or sanitary regulation;

(2) whether the deficiency or defect affects a vital facility;

(3) the potential or actual effect on safety and sanitation;

(4) the length of time the problem has persisted;

(5) the age of the structure;

(6) the amount of rent for the unit;

(7) whether the tenant has waived the defect or is estopped from raising the warranty; and

(8) whether the tenant is in any way responsible for the defective condition.

e. Any agreement by a tenant of a dwelling waiving or modifying the rights set forth in this section shall be void as contrary to public policy.

f. In determining the amount of damages sustained by a tenant as a result of a breach of the warranty set forth in this section, the court need not require any expert testimony.

2. This act shall take effect immediately.

STATEMENT

Tenants have the right to safe, sanitary, and decent housing. New Jersey Courts recognize that residential leases carry an “implied warranty of habitability.” This means that a landlord has a duty to maintain the rental unit and keep it fit for residential purposes throughout the entire term of the lease and that the landlord must

repair damage to vital facilities. If the landlord breaches his obligation of maintaining the property at an adequate standard of habitability, a tenant may withhold the rent or a portion of the rent to be used as a set-off, because of the deficient condition. If the landlord institutes an eviction proceeding for non-payment of rent, the tenant is entitled to use the landlord's breach of his obligation to provide a habitable residence as a defense and justification for the set-off (deduction of rental payment).

An eviction is an actual expulsion of a tenant out of the premises. A landlord must have good cause to evict a tenant. There are several grounds for a good cause eviction. If a tenant fails to pay rent, the landlord may immediately take legal action to have the tenant evicted. Although a tenant may assert a breach of the implied warranty of habitability as a defense in a landlord's eviction action for non-payment of rent, the defense is rarely raised.

This bill would codify and expand upon the court-created doctrine of the implied warranty of habitability in order to enhance the use of the doctrine as a defense to residential eviction proceedings. This will help prevent the eviction of unsophisticated tenants and help ensure that rental housing in our State meets reasonable standards of habitability.

The bill provides that a tenant may assert a breach of the implied warranty of habitability as a defense and set-off in a landlord's action for summary dispossession or non-payment of rent. If a tenant proves a breach, the court would reduce the tenant's rental obligation to the reasonable rental value of the property in its imperfect condition, and be entitled to an offset in the amount of the cost of all repairs made by the tenant which the landlord was obligated, but failed to make.

The bill also provides that a tenant who asserts a breach of the implied warranty of habitability as a defense shall not be required to deposit outstanding rent with the court, unless and until the court reviews a report from a code enforcement official, who has inspected the premises for the existence of code violations, documenting the extent to which the health or safety of residents are impaired or threatened by the condition of the premises. Based upon the court's review of the report, the court may, for good cause shown:

- order the tenant to deposit rent owed with the court;
- transmit a copy of the report to Department of Community Affairs; and
- transmit a copy of the report to any agency that administers a State or federal housing subsidy with regard to the residential property that is the subject of the action.

The bill also empowers the court to order suspension of the payment of any State or federal housing subsidy with regard to the residential property that is the subject of the action until remediation of any code violation or until further order of the court.