

SENATE, No. 538

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator RONALD L. RICE

District 28 (Essex)

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Senators Cruz-Perez and Stack

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 4/19/2021)

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

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) the age of the structure;

27 (6) the amount of rent for the unit;

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

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

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

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

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39 2. This act shall take effect immediately.
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42 STATEMENT

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

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

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

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

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

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

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

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