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Lock It or List It: Limiting Landlord Risk Through the Adoption of a Uniform Lock Change Law for Domestic Violence Victims

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LOCK IT OR LIST IT: LIMITING LANDLORD RISK THROUGH THE ADOPTION OF A UNIFORM LOCK CHANGE LAW FOR DOMESTIC VIOLENCE VICTIMS

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ABSTRACT

Once based on the rendering of agricultural services, landlord-tenant agreements have become increasingly complex over the last century. In exchange for rent, modern landlords assume certain contractual obligations including an implied duty to keep their property habitable and a more explicit duty to protect their tenants from certain types of foreseeable harm. These duties have been broadly construed to mean that landlords must take reasonable steps to protect their tenants from foreseeable third-party crimes committed on the rental property. To this end, most states now require landlords to install and maintain basic security devices like locks and exterior lighting. Failure to properly maintain these devices can serve as a basis for both contract and tort liability.

This Note suggests that the duty to protect gives rise to another, related obligation: landlords must comply with tenant lock change requests where the requesting tenant is domestic violence victim who is seeking to exclude her abuser. Recent caselaw suggests that a landlord could face substantial liability if he does not perform the lock change. However, if the victim and abuser are both on the lease, performing the lock change could expose the landlord to a different set of legal and financial risks. This Note argues that

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the adoption of a uniform lock change law would reduce uncertainty and mitigate the heightened risk to landlords resulting from such a broad reading of their duties. This can be done most effectively by updating the Violence Against Women Act to include a mandatory, federal lock change law for domestic violence victims.

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INTRODUCTION

Once focused solely on the conveyance of land, residential lease agreements have evolved into detailed contracts designed to protect the rights of both the landlord and the tenant.[1] Most modern-day leases define each party's responsibilities regarding payment, security deposits, maintenance, and repairs.[2] Landlords typically reserve the right to enter the property (with notice), raise the rent, and evict anyone who violates their lease.[3] Meanwhile, federal, state, and local laws give renters a limited right to privacy, and expressly forbid landlords from discriminating or retaliating against their tenants.[4] However, a savvy renter knows that his rights are not limited to those set out in his lease or written into law.[5]

While there is no common law duty to rescue, most jurisdictions agree that the unique nature of the landlord-tenant relationship gives rise to special obligations.[6] This was not always the case—until the mid-1900s, landlords were virtually immune to premises liability.[7] However, as society became more

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[1] *The Top Ten Lease Terms You Should Have When Renting*, FINDLAW (May 12, 2020), https://www.findlaw.com/realestate/landlord-tenant-law/the-top-ten-lease-terms-to-you-should-have-when-renting.html [https://perma.cc/8Q6S-X245].

[2] *Id.*

[3] Ann O'Connell, *Your Rights and Responsibilities as a Residential Landlord*, LAWYERS.COM (May 27, 2020), https://www.lawyers.com/legal-info/real-estate/landlord-tenant-law/your-rights-and-responsibilities-as-a-residential-property-landlord.html [https://perma.cc/9FKZ-VBK7] [hereinafter O'Connell, *Rights*]; *Landlord Rights and Responsibilities*, SMART ABOUT MONEY, https://www.smartaboutmoney.org/Courses/My-Housing-Plan/Landlord-Rights-and-Responsibilities [https://perma.cc/7WVR-EMGW].

[4] *See* O'Connell, *Rights*, *supra* note 3.

[5] *See 2 Basic Renters' Rights Included in Every Lease*, APARTMENTS.COM (Oct. 7, 2015), https://www.apartments.com/rental-manager/resources/article/2-basic-renter-rights-included-in-every-lease [https://perma.cc/6KX3-TKBY].

[6] *See FAQ—Landlord Responsibilities: Criminal Activities*, FINDLAW (June 5, 2020), https://realestate.findlaw.com/landlord-tenant-law/faq-landlord-responsibilities-criminal-activities.html [https://perma.cc/Q7W9-3PYD]; *see also* Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 481 (D.C. Cir. 1970); Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship, 826 A.2d 443, 450 (Md. 2003); Smith v. Lagow Constr. & Dev. Co., 642 N.W.2d 187, 190–91 (S.D. 2002).

[7] *See* C. Stephen Setliff, Comment, *Landlord Liability for Crimes Committed by Third Parties Against Tenants*, 21 U. RICH. L. REV. 181, 182 (1986).

industrialized and more people started renting, this lack of accountability became increasingly problematic.[8] Urban tenants often lacked the skills necessary to make their own repairs. They also lacked the *power* to address issues that arose in common areas controlled by the landlord.[9] Since the landlord was in the best position to make repairs, the onus fell on him.[10]

Today, all residential leases include a set of implied promises or "covenants" that obligate landlords to maintain their rental properties at a certain minimum standard.[11] The covenant of quiet enjoyment (CQE) gives tenants the right to use and enjoy their rental unit without disruption.[12] This covenant is not absolute; the landlord retains limited property rights for the term of the lease.[13] However, in exchange for rent, the tenant is entitled to privacy, exclusive use, safety, and security.[14]

Similarly, the implied warranty of habitability (IWH) says that tenants are entitled to a safe and habitable home for the duration of their lease.[15] The definition of "habitable" varies by jurisdiction and is often influenced by state and local housing codes.[16] However, certain requirements have become relatively standard across the United States.[17] Generally speaking, a landlord violates the warranty if he fails to provide access to basic utilities such as hot water, smoke detectors, or heat in cold weather.[18] Most states also require landlords to maintain safe and clean common areas and manage known environmental hazards such as lead,

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[8] *Id.*

[9] *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1078 (D.C. Cir. 1970); *Kline*, 439 F.2d at 480–81.

[10] See *Kline*, 439 F.2d at 481.

[11] *2 Basic Renters' Rights Included in Every Lease*, *supra* note 5.

[12] *See id.*

[13] *See id.*

[14] *Id.*

[15] *See What Is the Implied Warranty of Habitability?*, LEGALMATCH (March 4, 2018), https://www.legalmatch.com/law-library/article/implied-warranty-of-habitability-lawyers.html [https://perma.cc/P9TY-2VMA]. The IWH extends to most residential leases but may not cover condominiums. *Id.* It does not protect commercial tenants. *Id.*

[16] *See id.*

[17] *Id.*

[18] *Id.*

mold, and asbestos.[19] Because they are *implied* covenants, both the IWH and CQE are considered to be part of the landlord-tenant agreement, regardless of whether they are actually mentioned in the lease.[20] Thus, if a landlord breaches either, the tenant may terminate her lease or withhold rent.[21] If the problem persists and some injury results, the tenant may also opt to sue her landlord in tort.[22]

In the 1970s, the D.C. Circuit held that landlords are required to protect their tenants from crime on the property as well as physical defects.[23] More specifically, the court held that a landlord had a duty to protect his tenants from foreseeable third-party crimes in common areas, subject to the landlord's exclusive control.[24] In the decades that followed, many courts embraced similar theories of landlord liability and, eventually, a new rule emerged: landlords must take reasonable steps to protect their tenants from foreseeable third-party crimes.[25]

While the exact nature of a landlord's duty varies somewhat by state, landlords are usually required to provide basic security features such as deadbolts, exterior lighting, and window locks.[26] Once these measures are installed, the landlord is also responsible for maintaining them, ensuring they continue to work properly and making timely repairs as necessary.[27] But when is a repair necessary? Is it when a security device falls into physical disrepair, or when it simply ceases to work as intended?

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[19] Ann O'Connell, *Tenant Rights to a Livable Place*, NOLO, https://www.nolo.com/legal-encyclopedia/free-books/renters-rights-book/chapter7-2.html [https://perma.cc/539F-MA3T] [hereinafter O'Connell, *Livable*].

[20] Jaleesa Bustamante, *The Landlord's Guide to the Implied Covenant of Quiet Enjoyment*, iPROPERTYMANAGEMENT, https://ipropertymanagement.com/blog/quiet-enjoyment [https://perma.cc/WU2U-2M4E].

[21] *Id.*; *see What Is the Implied Warranty of Habitability?*, *supra* note 15.

[22] *See infra* Part I.

[23] Kline v. 1500 Mass Ave. Apartment Corp., 439 F.2d 477, 486–87 (D.C. Cir. 1970).

[24] *Id.*

[25] *See, e.g.,* Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship, 826 A.2d 443, 450 (Md. 2003); Smith v. Lagow Constr. & Dev. Co., 642 N.W.2d 187, 188–89 (S.D. 2002).

[26] *Landlord's Liability for Tenant Safety*, JUSTIA (Nov. 2018), https://www.justia.com/real-estate/landlord-tenant/information-for-landlords/landlords-liability-for-tenant-safety/ [https://perma.cc/X8BX-859A].

[27] *Id.*

Consider a lock; a basic security device designed to keep out intruders. If your lock could no longer perform this function, common sense would require you to either repair or replace it. This clearly applies where a lock is physically damaged, but a pristine lock can be equally ineffective if someone dangerous has a key.[28] This Note explores a landlord's duty to protect his tenants and evaluates the risks landlords face if they fail to fulfill that duty.[29] In particular, it considers the consequences that might arise if a landlord fails to address the security concerns of a tenant who has been the victim of domestic violence.[30]

Part I discusses the evolution of landlord-tenant law and explores the modern landlord's duty to keep his property safe and habitable.[31] Part II suggests that this duty includes an obligation to take reasonable measures to protect one's tenants from foreseeable third-party crimes.[32] If the IWH includes a duty to protect one's tenants from third parties, then a landlord must repair any property defects that put their tenants at a foreseeable risk of unreasonable harm.[33] If the landlord fails to make such a repair and the tenant is injured as a result, the landlord could be liable.[34]

Because domestic violence is cyclical, it is reasonably foreseeable that someone who has abused their partner in the past will do so again.[35] Thus, Part III of this Note argues that landlords have a duty to comply with tenants' lock change requests if the landlord knows the requesting tenant is a domestic violence victim.[36] This argument is based on the idea that a victim's lock is defective under the IWH if her abuser has a copy of the key.[37] However, requiring compliance with lock change requests could

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[28] *See* Suburban Lock, *Signs that Your Door Locks Should be Repaired or Replaced*, SUBURBAN DOOR LOCKS (Sept. 8, 2018), https://suburbanlock.com/door-locks-repaired-replaced-signs/ [https://perma.cc/US4Z-WBWT].

[29] *See infra* Conclusion.

[30] *See infra* Conclusion.

[31] *See infra* Part I.

[32] *See infra* Part II.

[33] *See* Smith v. Lagow Constr. & Dev. Co., 642 N.W.2d 187, 192 (S.D. 2002); *infra* Section II.A.

[34] *See infra* Part II.

[35] *See infra* Section III.A.

[36] *See infra* Part III.

[37] *See infra* Part III.

create serious legal and financial problems for landlords.[38] Part IV proposes the adoption of a uniform lock change law that sets out clear expectations for the landlord and tenant, and addresses various complications associated with mandatory lock changes.[39] Finally, this Note concludes that a uniform lock change law will serve the best interests of both landlords and tenants.[40]

I. EVOLVING THEORIES OF LANDLORD LIABILITY

In the beginning, leaseholds operated more like covenants than estates.[41] Medieval lords allowed farmers to occupy their land in exchange for agricultural services.[42] However, since the lords typically retained ownership of the land, early tenants had no real interest in the property they lived on.[43] Their rights were strictly contractual—limited by the explicit terms of their agreement with the landlord.[44] During the thirteenth century, lessees gained a recognized interest in the land itself.[45] Leaseholds came to be seen as conveyances of property rather than mere contractual agreements, and the tenant paid for exclusive possession.[46]

These early leases were governed by the common law doctrine of *caveat emptor*,[47] which freed the landlord from any obligation

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[38] *See infra* Part IV.

[39] *See infra* Part IV.

[40] *See infra* Conclusion.

[41] Setliff, *supra* note 7, at 181.

[42] Kenneth J. Sophie Jr., Comment, *Landlord-Tenant: The Medieval Concepts of Feudal Property Law Are Alive and Well in Leases of Commercial Property in Illinois*, 10 J. MARSHALL J. PRAC. & PROC. 338, 341 (1977).

[43] Setliff, *supra* note 7, at 181.

[44] *Id.*

[45] *Id.* at 181–82.

[46] *Id.* Once the tenant got possession, he retained complete control over the land for the duration of the leasehold. *Id.* at 182. This control included the right to exclude others from the property. *See id.*

[47] A Latin phrase meaning "let the buyer beware," *caveat emptor* remains the default rule for residential leases. *What Does 'Caveat Emptor' Mean?*, FINDLAW, https://consumer.findlaw.com/consumer-transactions/what-does-caveat-emptor-mean-.html [https://perma.cc/D3RY-PZBC]. Under the doctrine of *caveat emptor*, the tenant bears the burden of inspecting the property and ensuring its integrity before entering into a lease. *Id.* The landlord makes no guarantees regarding the fitness of the property and, barring active engagement in fraud or deception, he is not liable for any detectable defects. Richard C. Josephson, *The Implied Warranty of Habitability in Landlord Tenant Relations: A Proposal for Statutory Development*, 12 WM. & MARY L. REV. 580, 581 (1971).

to maintain his land after transferring possession.[48] While well-suited to the agrarian economies of the Middle Ages, such a complete waiver of landlord responsibly was much less compatible with city living.[49] With the start of the industrial revolutions, the typical tenant became less interested in the quality of the land, and more concerned with finding "a house suitable for occupation."[50] As landlord-tenant agreements became more complex, the parties began using more formal procedures to protect their rights.[51] Leases and covenants became commonplace, used to codify promises including the payment of rent and the use of the land.[52] In the face of this shift, the courts took their first, tentative steps towards limiting landlord immunity.[53]

A. The Implied Warranty of Habitability

The English court of Exchequer first deviated from the common law rule in *Smith v. Marrable*.[54] In the fall of 1842, the defendant, Sir Thomas Marrable, leased the plaintiff's home for a term of five weeks.[55] It quickly became apparent, however, that the house was infested with insects, forcing the defendant to vacate after just one week.[56] Marrable then returned the plaintiff's key along with one week's rent.[57] The plaintiff sued for the remainder, claiming Marrable had breached their contract.[58]

In finding for the defendant, the court determined that *caveat emptor* did not apply "if the demised premises are incumbered with a nuisance of so serious a nature that no person can reasonably be expected to live in them[.]"[59] It did not matter whether the landlord explicitly contracted to provide a premises

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[48] Setliff, *supra* note 7, at 182.

[49] Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1077 (D.C. Cir. 1970).

[50] *Id.* at 1078; *see also* Trentacost v. Brussel, 412 A.2d 436, 442 (N.J. 1980).

[51] Setliff, *supra* note 7, at 182.

[52] *Id.* at n.11.

[53] *See id.* at 182–83.

[54] (1843) 152 Eng. Rep. 693, 11 M. & W. 5; *see also* Josephson, *supra* note 47, at 582–83.

[55] *Marrable*, 152 Eng. Rep. at 693.

[56] *See id.*

[57] *See id.*

[58] *See id.* at 693–94.

[59] *Id.* at 694.

free of the offending condition. Rather, the case rested "in an implied condition of law, that he undertakes to let them in a habitable state."[60] There, the insect infestation had rendered the property uninhabitable, providing Marrable with a valid defense for abandonment.[61]

Smith v. Marrable did not mark the end of *caveat emptor*; it did, however, show that the common law rule was not absolute.[62] Several more exceptions emerged over the next century, freeing tenants from short-term leases when certain conditions made the property unlivable. Qualifying conditions included:

> (1) physical defects in that part of the premises over which the landlord retained control; (2) failure to disclose latent defects known to the landlord but unknown to the tenant; (3) breach of a covenant to repair; (4) negligent repair of the premises; (5) injuries occurring on premises leased for public use; and (6) failure to deliver habitable quarters.[63]

Each of these exceptions stemmed from of the idea that landlords had an obligation, implied in law, to maintain their rental properties at certain minimum standards.[64] Failure to fulfill this obligation constituted a breach of contract.[65]

Courts did not start reading this type of warranty into long-term residential leases until the 1960s.[66] Then, in 1970, the D.C. Circuit Court announced that "the old no-repair rule [could not] coexist with the obligations imposed on the landlord by a typical modern housing code."[67] By then, renters expected their apartments to have certain, standard features like heat, plumbing, and adequate ventilation,[68] However, most city dwellers lacked

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[60] *Id.*

[61] *See* Josephson, *supra* note 47, at 582; *see also* W.S.F., Jr., Comment, *Implied Warranty of Habitability in Lease of Furnished Premises for Short Term: Erosion of Caveat Emptor*, 3 U. RICH. L. REV. 322, 322–23 (1969).

[62] *See* Josephson, *supra* note 47, at 582.

[63] Setliff, *supra* note 7, at 183–84.

[64] *Marrable*, 152 Eng. Rep. at 694.

[65] Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1072 (D.C. Cir. 1970).

[66] David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CAL. L. REV. 389, 391–93 (2011).

[67] *Javins*, 428 F.2d at 1077.

[68] *Id.* at 1074.

the skills necessary to maintain these systems and had to rely on their landlords to make repairs.[69] The court explained:

> 'The complexities of city life ... have created new problems for lessors and lessees and these have been commonly handled by specific clauses inserted in leases. This growth in the number and detail of specific lease covenants has reintroduced into the law of estates for years a predominantly contractual ingredient....' ... Modern contract law has recognized that the buyer of goods and services in an industrialized society must rely upon the skill and honesty of the supplier to assure that goods and services purchased are of adequate quality. In interpreting most contracts, courts have sought to protect the legitimate expectations of the buyer and have steadily widened the seller's responsibility for the quality of goods and services through implied warranties of fitness and merchantability. Thus without any special agreement a merchant will be held to warrant that his goods are fit for the ordinary purposes for which such goods are used and that they are at least of reasonably average quality.[70]

Since residential leases had become so much like contracts, the court had little trouble deciding that landlords should be subject to the same rules as other merchants.[71]

Today, almost every state requires landlords to keep their rental properties fit for human occupation, but each has its own set of rules for what makes a property "habitable" and what constitutes a breach.[72] These rules are generally based on state and local housing codes, prior court rulings, or some combination of the two.[73] Still, the shared goal of providing safe, livable housing has given rise to some universal standards.[74]

Landlords are responsible for ensuring that their buildings are structurally sound, that the roofs do not leak, and that

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[69] *See id.* at 1075.

[70] *Id.* 1074–75 (quoting in part 2 R. POWELL, REAL PROPERTY ¶ 221[1] at 179 (1967)).

[71] *See id.* at 1075–76.

[72] *See* Marcia Stewart, *What Is the Implied Warranty of Habitability?*, NOLO, https://www.nolo.com/legal-encyclopedia/what-the-implied-warranty-habitability.html [https://perma.cc/S8LB-V5B8] [hereinafter Stewart, *Implied Warranty*].

[73] *Id.*

[74] *See* JESSE DUKEMINIER ET AL., PROPERTY 522–23 (Vicki Been et al. eds., 8th ed. 2014).

any common areas stay clean and free of hazards.[75] Landlords are also required to provide certain essential services considered vital to the residential use of the property.[76] These generally include things like electricity, running water, heat in cold weather, and pest extermination.[77] Today, most states also recognize the provision of basic security as an essential service.[78]

The IWH requires landlords to *keep* their properties habitable, establishing an ongoing duty to make necessary repairs.[79] Of course, as any renter knows, this duty has limits. Under the IWH, landlords are not required to address benign aesthetic issues like frayed carpets, nor are they required to repair small defects like ripped screens or dripping faucets.[80] While inconvenient, these problems are relatively minor in that none of them materially interfere with the property's residential use.[81] A repair is necessary, however, where the defect poses a tangible risk to the occupant's health or safety.[82] The onus is on the tenant to report these kinds of major defects, but, once the landlord has notice, he must address it within a reasonable amount of time.[83] Failure to do so constitutes a breach of the warranty.[84]

An aggrieved tenant has access to all of the typical contract remedies, which can prove costly for a landlord.[85] If the landlord

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[75] *A Tenant's Rights to Landlord Repairs*, FINDLAW, https://realestate.findlaw.com/landlord-tenant-law/a-tenant-s-rights-to-landlord-repairs.html [https://perma.cc/24NL-CGAW]; O'Connell, *Livable*, *supra* note 19.

[76] Trentacost v. Brussel, 412 A.2d 436, 443 (N.J. 1980) (citing Marini v. Ireland, 265 A.2d 526 (N.J. 1970)).

[77] *See* O'Connell, *Livable*, *supra* note 19.

[78] *Id.; see* Brichacek v. Hiskey, 401 N.W.2d 44, 47 (Iowa 1987) ("[W]e believe that a landlord is under a duty to provide a front door lock as a part of his overall duty of providing habitable quarters."); Kwaitkowski v. Superior Trading Co., 123 Cal. App. 3d 324, 333 (Cal. Ct. App. 1981) (finding that the landlord breached the implied warranty of habitability by failing to repair a defective front door lock).

[79] Erin Eberlin, *How Long Does a Landlord Have to Fix Something?*, THE BALANCE (November 25, 2020), https://www.thebalancesmb.com/how-long-does-a-landlord-have-to-make-repairs-4582377 [https://perma.cc/76T2-S2G2].

[80] *A Tenant's Rights to Landlord Repairs*, *supra* note 75.

[81] O'Connell, *Livable*, *supra* note 19.

[82] *Id.*

[83] Eberlin, *supra* note 79.

[84] *Id.*

[85] Anna O'Connell, *Consequences of Illegal Evictions*, NOLO, https://www.nolo.com/legal-encyclopedia/consequences-of-illegal-evictions.html [https://perma.cc/9DH9-G5L7] [hereinafter O'Connell, *Consequences*].

breaches the warranty, the tenant may be able to terminate her lease and vacate the unit without penalty. If the tenant chooses to exercise this option, the landlord will be left without income for that rental unit until he can find a new occupant.[86] The tenant may also be able to withhold rent, repair and deduct,[87] and collect compensatory damages, generally equal to the difference between the agreed-upon rent (fair market value) and the value of the premises in its defective state.[88]

B. Negligence

It is important to note that a breach of the IWH is sufficient to establish contract damages.[89] However, if the tenant suffers some additional injury because of an unaddressed defect, she may also be able to sue her landlord in tort.[90] At common law, there is no affirmative duty to help another in danger.[91] Under the "no duty" rule, a person is free to ignore someone in distress without risking personal liability for any injuries that result.[92] Since they have no duty to rescue that person, they breach no duty by failing to act.[93] However, there are three traditional exceptions to

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[86] O'Connell, *Livable*, *supra* note 19.

[87] *Id.*

[88] *See id.*; *see also* DUKEMINIER ET AL., *supra* note 74, at 520 (quoting Hilder v. St. Peter, 478 A.2d 202 (Vt. 1984)).

[89] DUKEMINIER ET AL., *supra* note 74, at 520.

[90] *See id.* at 521.

[91] RESTATEMENT (SECOND) OF TORTS § 314 (AM. L. INST. 1965) ("The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action.").

[92] *See* Marin Roger Scordato, *Understanding the Absence of a Duty to Reasonably Rescue in American Tort Law*, 82 TUL. L. REV. 1447, 1474–75 (2008).

[93] There are four key elements to a valid negligence claim. The plaintiff must prove:

> '(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.'

Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship, 826 A.2d 443, 451 (Md. 2003) (quoting Todd v. Mass Transit Admin., 373 A.2d 930 (Md. 2003)). Thus, in many cases, the plaintiff's ability to establish a negligence claim turns on

the rule that can "impose upon the actor the duty to take affirmative precautions for the aid or protection of [another]."[94]

First, a defendant generally has a duty to rescue where his own negligent conduct caused the plaintiff's peril.[95] Second, a duty can arise when the defendant voluntarily undertakes to aid the plaintiff.[96] The defendant may be subject to liability "for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking."[97] Finally, a duty may arise where the defendant and plaintiff have a certain kind of special relationship.[98] It is well-established that this exception applies to relationships between innkeepers and their guests, common carriers and their passengers, and employers and their employees.[99] However, courts have also found that a duty to act can arise from other, analogous relationships in which the defendant has some degree of control over the plaintiff's circumstances.[100] In these cases, the defendant has a duty to take reasonable care to protect the plaintiff from harm arising in the course of their relationship.[101] All three of these exceptions have been implicated in the case law discussed below.[102]

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whether they can prove that the defendant's breach proximately caused her injury. *See* Amir Tikriti, *Foreseeability and Proximate Cause in a Personal Injury Case*, ALLLAW, https://www.alllaw.com/articles/nolo/personal-injury/foreseeability-proximate-cause.html [https://perma.cc/UR48-AUKE]. An injury is foreseeable when (1) the defendant knew, or should have known, about conditions that increased the plaintiff's risk of injury, and (2) an ordinary person of reasonable intelligence would have realized the danger posed by those conditions. *Hemmings*, 826 A.2d at 445. Actual or constructive notice of the condition generally satisfies the first prong of the foreseeability test. *Id.* at 445, 454.

[94] RESTATEMENT (SECOND) OF TORTS § 314 cmt. a (AM. L. INST. 1965); *see also* Scordato, *supra* note 92, at 1474–75.

[95] RESTATEMENT (SECOND) OF TORTS § 321 (AM. L. INST. 1965); *see also* Scordato, *supra* note 92, at 1461.

[96] RESTATEMENT (SECOND) OF TORTS § 323 (AM. L. INST. 1965).

[97] *Id.*

[98] *Id.* § 314A; *see also id.* at cmts. a–b; Scordato, *supra* note 92, at 1460–61.

[99] *See* RESTATEMENT (SECOND) OF TORTS §§ 314A–B (AM. L. INST. 1965).

[100] Kline v. 1500 Mass. Ave. Apartment. Corp, 439 F.2d 477, 482–83 (D.C. Cir. 1970).

[101] RESTATEMENT (SECOND) OF TORTS § 314A cmt. c (AM. L. INST. 1965).

[102] *See infra* Part II.

II. THE DUTY TO DEFEND AGAINST THIRD-PARTY ACTS

The landlord-tenant relationship gives rise to a limited duty of protection.[103] This is especially true where the landlord retains exclusive control over some aspect of his property.[104] Should a problem arise there, the landlord would be the only one with the power to address it.[105] Thus, his tenants must rely on him to keep them safe. The D.C. Circuit Court of Appeals formalized this rule in *Kline v. 1500 Massachusetts Ave. Apartment Corp.*, holding that a landlord had a duty to protect his tenants from foreseeable, criminal acts of third parties occurring in common areas.[106]

Sarah Kline lived in a large apartment building with about 585 individual units.[107] When Kline first signed her lease in 1959, the building had a twenty-four-hour doorman stationed at the main entrance.[108] At least one employee manned the front desk at all times, and two garage attendants guarded one of the building's two side doors.[109] The second side door was unmanned, but was locked after 9 p.m.[110] By the middle of 1966, however, all of these security measures were gone.[111] Decreases in personnel left the doors unguarded and frequently unlocked.[112] There was no longer a doorman or front desk attendant to observe people coming in and out of the building.[113] Consequently, tenants began to experience an increase in criminal activity in and around the apartment building.[114] In November of 1966, Kline was assaulted and robbed in the common hallway area outside of her apartment.[115] Following the assault, Kline sued her landlord to recover for her

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[103] *Kline*, 439 F.2d at 482.

[104] *See id.* at 481–82.

[105] *Id.* at 481 (where the landlord "has the exclusive power to take preventative action, it does not seem unfair to place upon the landlord a duty to take those steps which are within his power to minimize the predictable risk to his tenants.").

[106] *Id.*

[107] *Id.* at 478–79.

[108] *Id.* at 479.

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.* at 483.

[115] *Id.* at 480.

injuries.[116] Her claim was based on the idea that a landlord had a duty to protect his tenants from foreseeable, criminal acts of third parties.[117] Kline believed her landlord had breached this duty by failing to maintain an adequate level of security and the court agreed.[118]

In finding the landlord liable, the court addressed four key issues.[119] First, and perhaps most importantly, the court declined to extend the standard "no duty" rule to the modern, urban landlord.[120] As a general matter, private parties do not owe each other any duty of protection.[121] Though the court generally extended this rule to landlords,[122] it determined the principle was ill-suited to modern, multi-unit apartment buildings with their many common spaces.[123] While the tenant may have had some power to minimize safety risks inside her own unit, the landlord was in the best position to take similar measures for the building's common areas.[124] Since the landlord had the most control over the common spaces, it seemed only fair that he should be responsible for keeping those spaces safe.[125]

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[116] *Id.* at 477.

[117] *Id.* at 478.

[118] *Id.*

[119] *Id.* at 481–82.

[120] *Id.* at 481.

[121] *Id.*

[122] *Id.* Previously, the D.C. Circuit had been reluctant to hold private landlords liable for crimes committed against their tenants and visitors. *See generally* Applebaum v. Kidwell, 12 F.2d (D.C. Cir. 1927); Goldberg v. Hous. Auth. of Newark, 186 A.2d 291 (N.J. 1962). The *Kline* court offered a number of explanations for this decision, including:

> judicial reluctance to tamper with the traditional common law concept of the landlord-tenant relationship; the notion that the act of a third person in committing an intentional tort or crime is a superseding cause of the harm to another resulting therefrom; the oftentimes difficult problem of determining foreseeability of criminal acts; the vagueness of the standard which the landlord must meet; [and] the economic consequences of the imposition of the duty.

439 F.2d at 481.

[123] *Kline*, 439 F.2d at 481.

[124] *Id.* at 481–82.

[125] *Id.* at 481.

This brought the court to its second major issue: the implications of exclusive control.[126] The court found that, where one party surrenders control to another, the party with control has a duty to take reasonable care in protecting the other from foreseeable injury.[127] Here, the tenant had no power to address security issues in the common areas.[128] Thus, "the duty [was] the landlord's because, by his control of the areas of common use and common danger, he [was] he only party who ha[d] the power to make the necessary repairs or to provide the necessary protection."[129]

Third, the court addressed the issue of foreseeability. Applying a classic negligence standard,[130] it reasoned that a landlord was only liable for his tenants' injuries if those injuries were foreseeable.[131] An injury was foreseeable if the landlord was "aware of the conditions which created a likelihood of criminal attack."[132] In other words, an injury was foreseeable if the landlord received notice of the threat.[133]

The court found that the landlord had both actual and constructive notice of the conditions leading to Kline's injuries.[134] The landlord received actual notice of the conditions from Kline herself, who reported the increase in crime to the landlord's agent prior to the attack.[135] Further, the sheer volume of police reports from the building's residents would have made it virtually impossible for the landlord *not* to know about the crimes occurring on the property.[136] Similarly, the increasing number of reports should have alerted the him to the fact that "further criminal attacks upon tenants would occur."[137]

Lastly, the court considered the contractual nature of the modern lease. Though its discussion of this issue was relatively

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[126] *Id.* at 483.

[127] *Id.*

[128] *See id.* at 479, 481.

[129] *Id.* at 481.

[130] *See* Olin L. Browder, *The Taming of a Duty—The Tort Liability of Landlords*, 81 MICH. L. REV. 99, 145 (1982).

[131] *Kline*, 439 F.2d at 483.

[132] *Id.* (internal quotation marks omitted).

[133] *See id.*

[134] *Id.* at 481.

[135] *Id.* at 481 n.3.

[136] *Id.* at 479 n.3.

[137] *Id.* at 483.

brief, it found that modern tenants purchased a "package of goods and services" when they rented an apartment.[138] In exchange for rent, the landlord agreed to provide not only the unit, but also various services such as proper sanitation and maintenance.[139] Noting that most modern tenants lacked the skills necessary to perform their own repairs, the court found that maintenance duties fell to the landlord under the implied warranty of habitability.[140] In cases like *Kline*, this included the duty to provide adequate security.[141]

Kline created a new basis of tort liability by establishing that landlords could be held legally responsible for third-party crimes against their tenants.[142] This new rule gained rapid, widespread acceptance.[143] Most states now hold landlords responsible for providing their tenants with some degree of protection against crime on the premises.[144] The recent trend in Florida "requires some landlords to take reasonable steps to protect their tenants from foreseeable attack."[145] Under the California Civil Code, landlords must take reasonable steps to secure their properties and protect their tenants from foreseeable third-party crimes.[146] Failure to do so can result in civil liability.[147]

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[138] *Id.* at 481.

[139] *Id.*

[140] *Id.* at 482.

[141] *Id.*

[142] *See id.*

[143] B.A. Glesner, *Landlords as Cops: Tort, Nuisance & Forfeiture Standards Imposing Liability on Landlords for Crime on the Premises*, 42 CASE W. RES. L. REV. 679, 689–90 (1992).

[144] Beth Dillman, *Criminal Acts and Activities: Landlord Liability FAQ*, NOLO, https://www.nolo.com/legal-encyclopedia/criminal-acts-activities-landlord-liability-faq.html [https://perma.cc/D3U5-WSK5].

[145] Kevin J. ODonnell, Comment, *Landlord Liability for Crime to Florida Tenants—The New Duty to Protect from Foreseeable Attack*, 11 FLA. ST. U. L. REV. 979, 980 (1983).

[146] CAL. CIV. CODE § 1714(a) (West 2012); Joseph Tobener, *Landlord's Duty to Prevent Crime*, TOBENER RAVENSCROFT (Sept. 12, 2018), https://www.tobenerlaw.com/landlords-duty-to-prevent-crime/ [https://perma.cc/TT3K-DPUK]; *see also Landlord Obligations for Habitable Premises—The Basic California Law*, STIMMEL L. (2019), https://www.stimmel-law.com/en/articles/landlord-obligations-habitable-premises-basic-california-law [https://perma.cc/VCK5-9DLG].

[147] CAL. CIVIL JURY INSTRUCTIONS No. 1005 (2020).

A. The Duty to Provide Adequate Security

In *Hemmings v. Pelham Wood Ltd. Liability Ltd. Partnership*,[148] the Court of Appeals of Maryland found that a landlord had a duty to maintain security devices in common areas in order to protect tenants in their individual units.[149] In 1997, Suzette and Howard Hemmings entered into a lease agreement for a two-bedroom apartment in Baltimore County.[150] The Hemmings' apartment was on the second floor.[151] At the rear of the unit, sliding glass doors gave them access to an outdoor patio.[152] In an effort to prevent crime, the landlord had installed a number of security devices around the complex including exterior lighting, standard door locks, and deadbolts.[153] For units like the Hemmings's, the landlord also provided horizontal bars—often referred to as "Charlie Bars"—with which the tenants could secure their sliding glass door.[154]

In 1998, an intruder broke into the Hemmings' apartment and shot and killed Mr. Hemmings.[155] It quickly became clear that the intruder had entered through the sliding glass doors at the rear of the unit.[156] In fact, after the incident, the landlord's repairman reported that the sliding door had been "totally mutilated," the frame twisted, and the locking mechanism irreparably destroyed.[157] The Charlie Bar, though clearly once attached, was missing entirely.[158] Further, several tenants recalled that the back of the Hemmings's building was poorly lit.[159] Both the repairman and the property manager thought there were lights installed at the back of the building, but neither was sure whether they were working at the time of the attack.[160]

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[148] 826 A.2d 443 (Md. 2003).
[149] *Id.* at 455–57.
[150] *Id.* at 446.
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.* at 447.
[156] *Id.*
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.* at 447–48.

Like in *Kline*, the attack on Mr. Hemmings was not an isolated incident.[161] In the two years prior to Mr. Hemmings' death, the police had received twenty-nine reports of burglaries or attempted burglaries and two reports of armed robberies occurring on the premises.[162] In five of the reported burglaries, the intruder appeared to have entered through the sliding glass door.[163]

The landlord kept a log of tenant complaints which included reports of armed robberies, break-ins, and theft from a balcony.[164] Though he did not keep any additional records of crime on the premises, there was substantial evidence to suggest he knew it was an ongoing problem.[165] An employee reported that the police had asked the landlord to assist with two separate surveillance operations.[166] On several occasions, the landlord had been at the rental office when police came by to report crimes that had occurred on the property.[167] Finally, the rental manager maintained that he had been forwarding tenants' break-in reports to the landlord several times each year.[168]

Mrs. Hemmings sued her landlord, arguing that, in failing to maintain adequate lighting, he had "negligently allowed dangerous conditions to remain unaddressed at the Hemmings' apartment."[169] Here, there was no doubt that the landlord had notice of the risk to his tenants.[170] Instead, this matter turned on whether the landlord had a duty to maintain the areas under his control to prevent criminal acts from occurring inside individual apartment units.[171]

The Maryland Court of Appeals had previously recognized an affirmative duty for landlords to protect tenants from foreseeable criminal acts occurring in common areas.[172] In finding

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[161] *Id.* at 448; *see also* Kline v. 1500 Mass. Ave. Apartment. Corp., 439 F.2d 477, 479 (D.C. Cir. 1970).

[162] *Hemmings*, 826 A.2d at 448.

[163] *Id.*

[164] *Id.*

[165] *See id.*

[166] *Id.*

[167] *Id.*

[168] *Id.*

[169] *Id.* at 449.

[170] *See id.* at 448.

[171] *Id.* at 451.

[172] *Id.* at 454 ("If the landlord knows, or should know, of criminal activity against persons or property in the common areas, he then has a duty to take

the landlord liable for Mr. Hemmings's injuries, the court now extended that duty to include injuries within individual apartment units where "an uncorrected defect in the common area adversely affects occupants of the leased premises."[173] Further, the court found that once a landlord takes steps to correct these conditions, he has a continuing obligation to properly maintain any added security features.[174]

The idea that a landlord must maintain a certain level of security was also addressed in *Kline*.[175] There, the court framed it as a contractual obligation, finding that the plaintiff was entitled to the same level of security she agreed to pay for when she signed her lease.[176] The *Hemmings* court expanded on this concept, going beyond the bounds of contract law and folding the duty to maintain into a landlord's general duty of protection. The court made it clear that the duty to protect was not limited to the mere installation of an adequate security system.[177] Rather, it also required the landlord to maintain and, when necessary, repair that system to ensure its continued function.[178] Since the Hemmings's landlord had decided to install security lights, he had a continuing obligation to maintain them.[179] He breached that duty by failing to repair the broken lights at the rear of the Hemmings's building.[180] Thus, even though Mr. Hemmings had been killed inside his apartment, the court found that the landlord could be held liable for his death.[181]

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reasonable measures, in view of the existing circumstances, to eliminate the conditions contributing to the criminal activity." (quoting Scott v. Watson, 359 A.2d 548, 554 (Md. 1975))).

[173] *Id.* at 455.

[174] *Id.* at 457. It is important to note that this rule remained true even where the landlord had no duty to provide particular security measures in the first place. *Id.* It is a basic principle of tort law that once a party undertakes to perform an act of service, they cannot abandon the act without risking liability. *Id.*

[175] *See* Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 485 (D.C. Cir. 1970); *see also* James L. Weiss, Comment, *Landlord Liability-Obligation to Maintain Adequate Security—A Comparative Study,* 59 TUL. L. REV. 701, 704 (1985).

[176] *Kline*, 439 F.2d at 485 (citing Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970)).

[177] *Hemmings*, 826 A.2d at 455–58.

[178] *Id.* at 457.

[179] *Id.* at 446, 458.

[180] *Id.* at 458.

[181] *Id.*

The *Hemmings* court noted that several other states had recognized a duty to adequately maintain common areas.[182] By the early 2000s, Illinois, Georgia, New York, and Florida had expressed their willingness to hold landlords liable for criminal acts against their tenants enabled by negligent maintenance of a common area.[183] New Hampshire, Oklahoma, and Pennsylvania specifically required landlords to maintain any security measures they installed for their tenants.[184]

South Dakota reluctantly joined the roster in 2002, when it decided *Smith v. Lagow Construction & Development Co.*[185] In evaluating a landlord's legal obligation to comply with tenant lock change requests, the State Supreme Court found that "landlords who by their own negligent acts or omissions increase the risk of harm from crime owe a duty to exercise reasonable care to protect tenants from that increased risk."[186]

Mary Ross lived in a low-income development in Sioux Falls, South Dakota.[187] The apartment complex had a policy that forbade tenants from adding to or changing the their front door locks and charged $45 for lost key replacements.[188] About a year after moving into the apartment, Ross's friend, Amy, began staying with her with her.[189] Ross gave Amy a key, which she subsequently lost.[190] Ross reported the lost key to the maintenance person, who relayed the information to his supervisor.[191] Shortly thereafter, hired killers entered Ross's apartment and stabbed her to death.[192]

The killers were sent by Amy's estranged husband, who blamed Ross for the failure of his marriage.[193] The men had used a key to get inside, though it was unclear whether it was the same key Ross had reported missing.[194] After Ross's death, there was

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[182] *Id.* at 457.
[183] *Id.*
[184] *Id.* at 458.
[185] 642 N.W.2d 187 (S.D. 2002).
[186] *Id.* at 194.
[187] *Id.* at 189.
[188] *Id.*
[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] *Id.*

some debate over whether she had ever actually requested a lock change.[195] Though the landlord's agents testified that she had not, Ross's mother recalled a phone conversation in which her daughter had stated the opposite and asked for $45 to cover the lock change fee.[196]

At the outset, the South Dakota Supreme Court made clear that it did not recognize a general duty for private people to protect one another from crime.[197] The court allowed for certain exceptions to the general rule—namely, exceptions arising out of special relationships "imposing an obligation to protect another from crime based on a position of dependence intrinsic to the relationship."[198] The court found no such special relationship between a typical landlord and his tenants.[199] Though it did recognize the general duty to maintain common areas discussed in *Kline*, it found this duty irrelevant to Ross's situation because the landlord did not, in fact, have exclusive control over Ross's lock.[200]

However, the court still did not exonerate the landlord.[201] Noting that special relationships provide only one exception to the "no duty" rule, it found that a duty of protection can also arise when a private person's act or omission puts another at greater risk of harm.[202] A lease term forbidding tenants from changing their own locks creates this kind of elevated risk by rendering them unable to defend themselves against possible intruders.[203] Thus, "[i]f landlords insist on the exclusive right to change locks, then they should have some duty to change those locks when they are no longer effective against foreseeable criminal activity."[204]

In both *Kline* and *Hemmings*, foreseeability hinged on whether the landlord knew of past crimes on the premises, and whether a reasonable person with that knowledge could have

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[195] *Id.*

[196] *Id.*

[197] *Id.* at 190.

[198] *Id.* at 191.

[199] *Id.*

[200] *Id.* Though Ross was not permitted to change or alter her locks, she had demonstrated her ability to give out copies of her key. *Id.* In giving out her copies of her key, she exercised some degree of control over the locks. *Id.*

[201] *See id.* at 191–92.

[202] *Id.* at 193; *see* RESTATEMENT (SECOND) OF TORTS, § 302B (AM. L. INST. 1965).

[203] *See Smith*, 642 N.W.2d at 193.

[204] *Id.*

anticipated future harm would occur.[205] Here, there was no known pattern of similar crimes.[206] Forced to depart from the standard test, the *Smith* court asked whether the landlord knew about the defect in Ross's lock and, if so, whether he could have reasonably foreseen that his inaction would result in bodily harm.[207] If the answer was yes, and if a fact-finder determined that Ross had actually requested a lock change, then the landlord would be liable for her injuries.[208]

The *Smith* court defined an important new rule: a landlord who insists on controlling all lock changes has a special duty to his tenants.[209] Namely, where a tenant request a lock change and it is clear that failure to provide one will place her at an increased risk of harm, the landlord must comply.[210] If the landlord does not comply and an injury results, the landlord may be subject to negligence liability.[211] Importantly, the facts of *Smith* suggest that this rule applies even if the lock has no physical defects.[212]

B. A Safe and Habitable Place to Live

Today, most states consider basic security to be a necessary service under the IWH.[213] After all, "without a minimum of security, [a tenant's] well-being is as precarious as if they had no heat or sanitation."[214] Consequently, more and more states are beginning to hold landlords liable for injuries resulting from unaddressed security concerns. In *Trentacost v. Brussel*, the Supreme Court of New Jersey held that the IWH required landlords to provide "reasonable safeguards to protect tenants from foreseeable criminal

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[205] Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 481 (D.C. Cir. 1970); Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship, 826 A.2d 443, 454 (Md. 2003).

[206] *See generally Smith*, 642 N.W.2d. 187.

[207] *Id.* at 192.

[208] *Id.* at 193. The case was remanded to the lower court for additional fact-finding. *Id.*

[209] *See id.* at 191–92.

[210] *See id.* at 192.

[211] *See id.* at 193.

[212] *See id.* at 191–93.

[213] *See FAQ—Landlord Responsibilities: Criminal Activities*, *supra* note 6.

[214] Trentacost v. Brussel, 412 A.2d 436, 443 (N.J. 1979).

activity on the premises."[215] After being brutally assaulted in her apartment building, Florence Trentacost sued her landlord, claiming he had breached his warranty by failing to secure the main entrance.[216] There was substantial evidence that the landlord knew about the defect; the plaintiff testified that she had complained about the conditions and that her landlord had promised to install a lock.[217] Still, at the time of the attack, he had taken no such measures.[218] In finding for Trentacost, the court explained that a modern-day apartment was simply not habitable without some minimum amount of security.[219]

In many states, the IWH requires landlords to provide their tenants with standard door locks and deadbolts.[220] Some states have taken it a step further, imposing liability on landlords who fail to address specific third-party threats.[221] In *Auburn Leasing Corp. v. Burgos*,[222] a New York civil court held that a landlord had breached the IWH by failing to evict resident drug dealers who were harassing another tenant.[223] In *Francis v. Kings Park Manor, Inc.*, the U.S. District Court for the Eastern District of New York found that a tenant had stated a plausible claim under the IWH where the landlord had failed to intervene in response to a co-tenant's threatening behavior.[224] The district court noted that "courts have often applied the implied warranty of habitability to conditions

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[215] *Id.*

[216] *Id.* at 438–39.

[217] *Id.* at 439.

[218] *Id.* at 438.

[219] *Id.* at 443.

[220] As discussed above, state and local housing codes may also influence a landlord's obligations under the IWH. *See supra* Section I.A. At least two states have passed statutes that require landlords to install certain types of locks in every residential unit. *See Latest Lock Law Lengthens Landlord Lapse Liability (California Only)*, LANDLORD.COM (2014), http://www.landlord.com/latest_lock_law_lengthens_landlo.htm [https://perma.cc/WX3V-EV8G]; *Building Security, Locks, & the Law—FAQ*, METRO. TENANTS ORG. (Nov. 2, 2009), https://www.tenants-rights.org/building-security-locks-the-law-faq/ [https://perma.cc/4ZXY-C8TJ]. Failure to comply constitutes a breach of the IWH. *See id.*

[221] *See, e.g.*, Kline v. 1500 Mass. Ave. Apartment. Corp., 439 F.2d 477, 486–87 (D.C. Cir. 1970).

[222] 609 N.Y.S.2d 549 (N.Y. Civ. Ct. 1994).

[223] *Id.* at 551.

[224] 91 F. Supp. 3d 420, 437 (E.D.N.Y. 2015) *aff'd in part*, *vacated in part*, 944 F.3d 370 (2d Cir. 2019).

beyond the landlord's direct control,"[225] recognizing that a third party's actions can make a premises unlivable.[226]

III. OBLIGATORY REKEYING FOR DOMESTIC VIOLENCE VICTIMS

Imagine that you have recently lost your house keys. You think they might have fallen out of your pocket while you were running errands, but you are not sure where. You try to retrace your steps; you comb the grocery store parking lot and call every store you stopped at that day to see if someone turned them in. Eventually, you accept that your keys are gone, and you decide to change your locks.[227] Now consider why it is that you might make that decision. Most likely, you are concerned that someone will find your keys and use them to enter your home without your consent. Your locks may be in perfect working condition. In fact, you might never have thought to change them if you hadn't lost your keys. But you *did* lose your keys, and now you are worried that your locks will not be able to serve their essential purpose: keeping intruders out.

The odds that someone will actually find your keys and use them to break into your home are slim.[228] But consider a different situation: imagine you are missing a copy of your key, but you know exactly who has it. You also know that this person knows where you live and that they may want to cause you harm. This is often the case for domestic violence victims who have been living with their abuser.[229] As long as the abuser has a copy of the key,

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[225] *Id.* at 436.

[226] *See id.* at 436–38. This broad reading of the warranty is still reasonably new and has yet to gain widespread acceptance. However, more and more courts are finding tenant harassment to be an actionable issue. *See* Joshua C. Ezrin & Aaron H. Darsky, *Providing Damages for Aggrieved Renters*, PLAINTIFF MAG. (Mar. 2019), https://www.plaintiffmagazine.com/recent-issues/item/experts-in-habitability-cases [https://perma.cc/5TTU-QBCT]; Joseph William Singer, *Legal Questions About Landlord Liability When One Tenant Harasses Another*, HARV. (Mar. 28, 2018), https://scholar.harvard.edu/jsinger/blog/legal-questions-about-landlord-liability-when-one-tenant-harasses-another [https://perma.cc/3APB-UW59] (harassment can serve as a basis for a constructive eviction claim).

[227] *The Top 9 Reasons to Have a Locksmith Change Your Home Locks*, GAMBLE LOCK, https://www.gamblelock.com/top-reasons-locksmith-change-locks/ [https://perma.cc/74QG-KZFJ].

[228] *Should You Change Your Locks After Losing House Keys?*, BUTLER DURRELL (Jan. 10, 2018), https://www.butlerdurrellsecurity.com/should-you-change-your-locks-after-losing-house-keys/ [https://perma.cc/CG24-DJM6].

[229] *See supra* Section I.A.

the locks cannot keep the victim safe. Under *Smith*, this renders them functionally defective.[230]

A. A Duty to Repair Under the Implied Warranty of Habitability

The IWH requires landlords to keep their properties safe and habitable.[231] This may mean repairing major structural defects or ensuring tenants have access to essential services like heat and running water. However, *Kline* and its progeny show that landlords also have a duty to repair less tangible defects when failing to do so would leave their tenants unreasonably vulnerable to foreseeable harm.[232]

It is reasonably foreseeable that failing to provide one's tenants with working locks makes them unreasonably vulnerable to third-party crimes.[233] Thus, the IWH requires landlords to repair broken locks within a reasonable amount of time.[234] Of course this raises the question, when is a lock considered to be broken?

According to Webster's Dictionary, something is broken when it is "not working properly" or is "rendered inoperable."[235] Thus, in the narrowest sense, a lock becomes broken when the hardware fails. However, based on these definitions, one could also conclude that a lock is "broken" any time it stops serving its intended purpose.[236] A lock's primary purpose is to keep intruders out. Obviously, a lock that no longer latches cannot serve this purpose and must be replaced. But, as *Smith* illustrates, an intact lock can be just as ineffective as a damaged one if an unwelcome person has a key.[237]

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[230] *See* Smith v. Lagow Constr. & Dev. Co., 642 N.W.2d 187, 191–93 (S.D. 2002).

[231] *See supra* Section I.A.

[232] *See supra* Part II.

[233] *See supra* Part II.

[234] *See* Stewart, *Implied Warranty*, *supra* note 72.

[235] *Broken*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/broken [https://perma.cc/5GVX-ULWN]; *Break,* MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/break#h1 [https://perma.cc/T6XA-XFZ3].

[236] *Function*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/function [https://perma.cc/NGZ5-SHY7].

[237] *See supra* text accompanying notes 182–207; *see generally* Smith v. Lagow Constr. & Dev. Co., 642 N.W.2d 187 (S.D. 2002).

This is especially relevant in the context of an abusive relationship where the parties have been sharing an apartment. If the abuser leaves (either voluntarily or by court order) but keeps a copy of the key, the victim's locks cannot keep out one of the biggest threats to their safety.[238] In situations like these, the victim's lock is broken in the broader sense of the term. That is, it fails to serve its intended purpose because it cannot exclude the abuser.

It is well established that a broken lock is the type of defect that renders a rental property uninhabitable under the IWH.[239] Thus, one could argue that a landlord has an implicit duty to replace his tenants' locks in cases like the one described above. Of course, this argument would only be effective if the landlord had notice of the defect, but precedent shows that the notice requirement is relatively easy to meet.[240] The *Smith* court suggested that the notice requirement is met when a landlord could have reasonably foreseen that a property defect would "probably put [his tenant] at an unreasonable risk of harm."[241] Certainly, then, a landlord would be considered "on notice" if his tenant informed him that someone who wished to harm them had a key to their apartment.[242]

B. Domestic Violence as a Foreseeable Risk

As discussed above, landlords have an implicit duty to take reasonable steps to protect their tenants from foreseeable third-party crimes occurring on the rental property.[243] The IWH requires landlords to provide their tenants with basic security devices, but *Kline* and *Hemmings* show that a landlord's duty to protect his tenants does not end there. [244]

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[238] *See generally* Steve Albrecht, *Do Domestic Violence Restraining Orders Ever Really Work?*, PSYCH. TODAY (July 27, 2012), https://www.psychologytoday.com/us/blog/the-act-violence/201207/do-domestic-violence-restraining-orders-ever-really-work [https://perma.cc/RTW3-PWDV] (suggesting that abusers violate orders of protection about half the time).

[239] *See supra* Section II.A.

[240] *Id.*

[241] *See Smith*, 642 N.W.2d at 192.

[242] In the situation described, notice would likely require the tenant to disclose the nature of the domestic violence threat against her. *See infra* Section III.B.2.

[243] *See* Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 483 (D.C. Cir. 1970); *Smith*, 642 N.W.2d at 193; Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship, 826 A.2d 443, 454 (Md. 2003).

[244] *See Hemmings*, 826 A.2d at 457–58.

In *Hemmings*, the court found that landlords were also responsible for monitoring and maintaining the devices they installed.[245] If the landlord had notice of a defect in the security system but failed to address it, he could be held liable for any resulting injuries to his tenants.[246] *Smith* suggests that landlords may also have a duty to address less tangible defects if they pose a foreseeable threat to their tenants' safety.[247] Specifically, the court found that a landlord could be liable for failing to replace a functioning lock if it was foreseeable that his inaction would pose a risk to the tenant's safety.[248]

Taken together, these cases establish a clear rule: a landlord has a legal duty to repair or replace a security device on his property if (1) he knows or should know that it is defective and (2) a reasonable person would understand that failure to address the defect would likely put his tenants at an unreasonable risk of harm.[249] If the problem persisted to the point where the unit became unlivable, the landlord would be liable for a breach of contract under the IWH. If the tenant suffered a foreseeable injury as a result of the defect, the landlord could also be liable for substantial tort damages.[250]

1. The Notice Requirement

When a domestic violence victim requests a lock change in order to exclude her abuser from the unit, the first requirement would be met if she told her landlord why she was making the request. Certainly, the victim's lock cannot function as intended if her abuser has a key.[251] However, a reasonable landlord would be unlikely to see the significance of this defect without sufficient context. After all, a lock does not become defective just because someone other than the tenant has a key. In cases like these, the lock is defective because the *tenant's abuser* has a key.[252] Thus, for a landlord to have notice of the defect, the tenant would have to disclose that she was a domestic violence victim.

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[245] *Id.*
[246] *See id.* at 458.
[247] *See Smith*, 642 N.W.2d at 191–93.
[248] *See id.*
[249] *See id.*; *Hemmings*, 826 A.2d at 452.
[250] *See Smith*, 642 N.W.2d at 192–93.
[251] *See supra* Section III.A.
[252] *See supra* Section III.A.

Given the nature of domestic violence, actual notice would be necessary to satisfy the notice requirement.[253] For constructive notice to be effective, the landlord would have to be able to deduce that the tenant was being abused.[254] However, domestic violence is a highly sensitive issue and victims often try to hide the signs out of fear or shame.[255] Even if the abuse is evident, research suggests that those outside the relationship are often reluctant to acknowledge it.[256] All this considered, it would be unreasonable to expect a landlord to deduce that his tenant was being abused, making actual notice the only viable option.

So, what constitutes actual notice in domestic violence cases? In *Smith*, the court implied that the plaintiff would have been entitled to a lock change if she had told her landlord that her key was missing.[257] That information alone would have been sufficient to establish that her lock was no longer effective.[258] The same basic principle could arguably apply to domestic violence cases. *Smith* suggests that the notice requirement would be satisfied if a victim informed her landlord that her partner posed a threat to her safety and this same partner had a copy of her key.[259] By making this disclosure, the tenant would be providing her landlord with actual notice of the defect in her lock; the knowledge requirement would technically be satisfied.

2. The Foreseeability Requirement

In order to establish liability (contract or tort), the tenant would also have to prove that it was reasonably foreseeable that

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[253] *See supra* Section III.B.

[254] Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 479–80 n.3 (D.C. Cir. 1970) (holding that the sheer amount of police reports resulted in constructive notice).

[255] *See Why Do Victims Stay?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, https://ncadv.org/why-do-victims-stay [https://perma.cc/P3ZA-3KQH].

[256] Sarah Wendt, *Why Don't We Speak Up When We See Signs of Domestic Violence?* THE CONVERSATION (Oct. 1, 2013), http://theconversation.com/why-dont-we-speak-up-when-we-see-signs-of-domestic-violence-32022 [https://perma.cc/MA4T-PGB4] (discussing warning signs and recognizability).

[257] *See* Smith v. Lagow Constr. & Dev. Co., 642 N.W.2d 187, 191–93 (S.D. 2002).

[258] *See id.* at 193.

[259] *See id.* at 191–93.

she would suffer some injury as a result of the defect.[260] In the context of a domestic violence case, this prong is automatically satisfied if the tenant meets the knowledge requirement explained in Section III.B.1.[261]

In the relevant context, an injury is foreseeable if the landlord can reasonably predict that his "failure to act on [the tenant's] request put her at probable high risk of harm from an imminent criminal act."[262] *Smith* suggests that the tenant's mere request for a lock change would have been sufficient to make her ultimate injury foreseeable.[263] If a tenant informs her landlord that her lock is not working, the landlord can reasonably predict that someone might break in and harm her. By this logic, the fact that a tenant's abusive partner has a key to her home is surely enough to warrant a lock change.

Intimate partner violence affects more than 12 million people each year.[264] Those who have not experienced it themselves likely know someone who has or, at the very least, have likely seen domestic violence depicted in the popular media.[265] Thus, in the modern era, it is reasonable to assume that most people understand domestic violence is a recurring threat.[266] If a tenant informs her

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[260] *See generally supra* Parts I and II. Showing that the defect posed a substantial threat to the tenant's health and safety would likely be sufficient to establish liability under the IWH. *See supra* text accompanying notes 75–84. However, to establish tort liability, the tenant would also have to prove that the foreseeable injury actually resulted. *See Smith*, 642 N.W.2d at 191–93.

[261] *Supra* Section III.B.I.

[262] *See Smith*, 642 N.W.2d at 193.

[263] *See id.* at 191–93.

[264] *Get the Facts & Figures*, NAT'L DOMESTIC VIOLENCE HOTLINE, https://www.thehotline.org/resources/statistics/ [https://perma.cc/QK4Q-S7RB].

[265] Popular films depicting domestic violence include The Girl on the Train (2016) and Sleeping with the Enemy (1991). *35 Movies Survivors Say Accurately Depict Domestic Violence*, DOMESTICSHELTERS.ORG, https://www.domesticshelters.org/resources/lists/movies-that-depict-domestic-violence?q=0#list-scroll [https://perma.cc/S4X2-SPX8]. For examples of popular songs that depict domestic violence see *Church Bells: Carrie Underwood*, LYRICS.COM, https://www.lyrics.com/lyric/32176399/Carrie+Underwood/Church+Bells [https://perma.cc/23ZL-XTU2]; *Goodbye Earl: The Chicks*, LYRICS.COM, https://www.lyrics.com/lyric/3031554/Dixie+Chicks/Goodbye+Earl [https://perma.cc/EHV6-QGBQ]; *Love The Way You Lie: Eminem, Rihanna*, LYRICS.COM, https://www.lyrics.com/lyric/19666126/Rihanna/Love+the+Way+You+Lie [https://perma.cc/JV3G-X5GU].

[266] Jennifer Focht & Amanda Chu, *The Cycle of Domestic Violence*, NAT'L CTR. FOR HEALTH RSCH., http://www.center4research.org/cycle-domestic-violence/ [https://perma.cc/LQ59-YQRQ].

landlord that her abusive partner has a copy of her key, a reasonable landlord should recognize that failure to change the lock puts this tenant at a "probable high risk of harm."[267] If the abuser returns, it is more than likely that he will resume the abuse.[268]

IV. THE NEED FOR A UNIFORM LOCK CHANGE LAW

There is no easy way for a domestic violence victim to escape their abuser. For many, moving out of the shared unit is simply not an option.[269] Not only is moving expensive,[270] but in this context it can also be extremely risky.[271] Abusers often respond with anger and aggression; in fact, experts say that "the most dangerous time for a domestic violence victim is when she decides to leave."[272] Removing the abuser from the home may not be any less complicated. If the abuser has a legal interest in the apartment, it might be difficult to convince him to leave voluntarily.

A. The Need for Reform

A lock change may seem like the simplest solution, but this too comes with significant complications. Most residential leases include a provision that prohibits tenants from changing their locks without the landlord's permission.[273] Below are two fairly standard examples:

> **Keys and Locks:** Landlord shall furnish Tenant with two (2) keys for each corridor door entering the Leased Premises. Additional keys will be furnished at a charge by Landlord on an

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[267] *Smith*, 642 N.W.2d at 193.

[268] *See* Focht & Chu, *supra* note 266.

[269] *See Why Do Victims Stay?*, *supra* note 255.

[270] The American Moving and Storage Association reports that the average *intra*state move costs about $2,300, while the average *inter*state move exceeds $4,000. Joshua Green, *What is the Average Moving Cost?* MY MOVING REVIEWS (Nov. 15, 2019), https://www.mymovingreviews.com/move/average-moving-cost/ [https://perma.cc/L4ZF-ZHSC].

[271] *Understanding the Complexities of Relocation for Survivors of Domestic Violence*, NNEDV (Mar. 16, 2015), https://nnedv.org/latest_update/understanding-the-complexities-of-relocation-for-survivors-of-domestic-violence/ [https://perma.cc/83B3-5RLM].

[272] *Id.*

[273] *See* Laura Agadoni, *Lock Lock, Who's There? The Rules for Changing Locks*, LANDLORDOLOGY (Sept. 14, 2015), https://www.landlordology.com/rules-for-changing-locks/ [https://perma.cc/8YAV-SBEF].

> order signed by Tenant or Tenant's authorized representative. All such keys shall remain the property of the Landlord. *No additional locks shall be allowed on any door of the Leased Premises nor shall Tenant change the locks without Landlord's permission*, and Tenant shall not make or permit to be made any duplicate keys, except those furnished by Landlord. Upon termination of this lease, Tenant shall surrender to Landlord all keys of the Leased Premises and give to landlord the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, installed in the Leased Premises by Tenant.[274]

> **Keys:** Keys to the Rental Property belong to the Landlord and will be returned by Tenant to Landlord at the end of the tenancy. *Tenant will not modify or rekey any locks to the Rental Property, nor make any duplicate keys. In the event of the need for replacement keys or new locks, Tenant will request them from the Landlord.*[275]

This type of "no modification" policy might seem especially appealing to landlords as it guarantees they will have access to the property in the event of an emergency.[276] However, it also creates another set of obstacles for domestic violence victims looking to keep out their abusers. At the very least, they will need to contact their landlord and obtain his permission before they can change their locks. If their lease prohibits "do-it-yourself" lock changes, they might have to wait days for the landlord to purchase and install the new hardware.

From the landlord's perspective, complying with a lock-change request can have significant legal and financial consequences. Almost every state has laws against locking out one's tenants without an order of eviction.[277] These "anti-lockout" statutes are designed to protect tenants from wrongful evictions.[278] However,

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[274] *Keys and Locks Sample Clauses*, L. INSIDER, https://www.lawinsider.com/clause/keys-and-locks [https://perma.cc/2XDU-Z6A6] (emphasis added).

[275] *Residential Landlord-Tenant Agreement Template*, PANDADOC, https://www.pandadoc.com/residential-landlord-tenant-agreement-template/ [https://perma.cc/6US9-Z67T] (emphasis added).

[276] *See Requirements for Landlord Entry*, FINDLAW (last updated Sept. 6, 2018), https://realestate.findlaw.com/landlord-tenant-law/requirements-for-landlord-entry.html [https://perma.cc/G834-78X3].

[277] Marcia Stewart, *Don't Lock Out or Freeze Out a Tenant—It's Illegal*, NOLO, https://www.nolo.com/legal-encyclopedia/lock-out-tenant-illegal-29799.html [https://perma.cc/YKU9-YUWU] [hereinafter Stewart, *Lock Out*].

[278] *See* Steven Richmond, *4 Things Landlords Are Not Allowed to Do*, INVESTOPEDIA (June 25, 2019), https://www.investopedia.com/articles/personal

if the abuser is a cosigner on the lease, these laws also effectively guarantee him continued access to the apartment.[279] Landlords who violate these laws may find themselves facing expensive penalties and even criminal charges.[280] Further, the wronged tenant may sue for injuries including assault, battery, and intentional infliction of emotional distress.[281]

Anti-lockout laws create a serious problem for landlords where the victim and abuser are both on the lease. If the landlord decides to honor the victim's request, he might be penalized for executing an illegal lockout eviction. On the other hand, a landlord who declines to change the locks may face liability under *Smith*.[282] The adoption of a uniform law governing lock changes would relieve some of this uncertainty by setting clear expectations for the parties. It could also provide a workable solution for the conflict created by anti-lockout laws.[283] By limiting the risks associated with providing these lock changes, a uniform law would ultimately lead to safer housing for domestic violence victims.

B. Proposed Legislation

The Federal Violence Against Women Act (VAWA) provides the most convenient vehicle for establishing a uniform lock change law. Congress first enacted VAWA in 1994 in response to growing national concern about violence toward women.[284] The original Act was designed to strengthen the national response to domestic violence, sexual violence, stalking, and other related crimes, and its subsequent reauthorizations have provided additional protections

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-finance/061515/4-things-landlords-are-not-allowed-do.asp [https://perma.cc/6424-6AWV].

[279] *See id.*

[280] *See* O'Connell, *Consequences*, *supra* note 85. In Arizona, the penalty for self-help evictions is the greater of either two months' rent or twice the actual damages. *Id.* In Connecticut, a landlord who attempts an unlawful eviction can be prosecuted for a misdemeanor. *Id.*

[281] Stewart, *Lock Out*, *supra* note 277.

[282] *See* Smith v. Lagow Constr. & Dev. Co., 642 N.W.2d 187, 193 (S.D. 2002).

[283] *See supra* text accompanying notes 276–81.

[284] *See generally* LISA N. SACCO, CONG. RSCH. SERV., R45410, THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION, at Summary (Apr. 23, 2019), https://fas.org/sgp/crs/misc/R45410.pdf [https://perma.cc/B23J-MKXY].

for victims and members of other vulnerable groups.[285] As part of the 2014 reauthorization, Congress added new housing protections for domestic violence victims.[286] However, VAWA still does not address the kinds of security concerns discussed in this Note.[287]

In the absence of a federal rule, many states have begun to pass their own lock change laws for domestic violence victims.[288] While these laws address some of the problems discussed above, they vary significantly by state,[289] creating additional confusion and uncertainty for landlords who own multiple properties in different jurisdictions. To better protect both landlords and tenants, VAWA should be amended to include a federal lock change law that could be uniformly applied across all 50 states. This law should be modeled after successful state statutes such as those adopted in Maryland and Indiana.

Maryland's mandatory lock change law[290] would serve as the best template for national reform. Thorough and comprehensive, this statute gives substantial protection to the tenant without sacrificing the interests of the landlord. The Maryland Code, Real Property, annotated § 8-5A-06 provides:

> **Written request to change locks**
> (a) A person who is a victim of domestic violence ... and who is a tenant under a residential lease may provide to the landlord a written request to change the locks of the leased premises if the protective order or peace order issued for the benefit of the tenant or legal occupant requires the respondent to refrain from entering or to vacate the residence of the tenant or legal occupant.

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[285] *Id.*; Laura L. Rogers, *The Violence Against Women Act—An Ongoing Fixture in the Nation's Response to Domestic Violence, Dating Violence, Sexual Assault, and Stalking*, DOJ ARCHIVES (Feb 19, 2020), https://www.justice.gov/archives/ovw/blog/violence-against-women-act-ongoing-fixture-nation-s-response-domestic-violence-dating [https://perma.cc/2SWE-U4T5].

[286] *See Violence Against Women Act Includes Housing Provisions*, NAT'L COUNCIL STATE HOUS. AGENCIES (Mar. 8, 2013), https://www.ncsha.org/blog/violence-women-act-includes-housing-provisions/ [https://perma.cc/ZGA7-RRFK].

[287] *Id.*

[288] NAT'L HOUSING L. PROJECT, HOUSING RIGHTS OF DOMESTIC VIOLENCE SURVIVORS: A STATE AND LOCAL COMPENDIUM (July 2018), https://www.nhlp.org/wp-content/uploads/2018/07/2017-DV-State-and-Local-Housing-Laws-Compendium.pdf [https://perma.cc/D4LW-CRNZ]. As of 2017, 18 states had passed their own lock change laws for victims of domestic violence. *Id.*

[289] *See generally id.*

[290] MD. CODE ANN. REAL PROP. § 8-5A-06 (West 2021).

> **Contents of request**
> (b) The written request provided under subsection (a) of this section shall include:
>
> (1) A copy of a protective order issued for the benefit of the tenant or legal occupant under § 4-506 of the Family Law Article; or
> (2) A copy of a peace order issued for the benefit of the tenant or legal occupant for which the underlying act was sexual assault under § 3-1505 of the Courts Article. [291]

To help limit uncertainty, this type of court documentation would be required to establish actual notice—and consequently, to establish liability—under the proposed legislation. Put differently, all other forms of notice would be deemed statutorily insufficient under the proposed federal lock change law. If a tenant requested a lock change and provided the necessary documentation, her landlord would be liable for a breach of the IWH if he failed to comply with her request.[292] If the tenant's abuser used their copy of the key to enter the unit and harm the tenant, the landlord could also be liable in tort.[293] However, if a tenant did not provide the required notice, the landlord could not be found liable under either theory.

The Maryland Code also addresses various logistical concerns such as timing and payment. The Code states:

> **Landlord or tenant changing locks the next business day**
> (c)
> (1) The landlord shall change the locks on the leased premises by the close of the next business day after receiving a written request under subsection (a) of this section.
> (2) If the landlord fails to change the locks as required under paragraph (1) of this subsection, the tenant:
> (i) May have the locks changed by a certified locksmith on the leased premises without permission from the landlord; and
> (ii) Shall give a duplicate key to the landlord or the landlord's agent by the close of the next business day after the lock change.
>
> **New keys provided to tenant**
> (d) If a landlord changes the locks on a tenant's leased premises under subsection (c) of this section, the landlord:

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[291] *Id.*
[292] *See supra* Section III.A.
[293] *See supra* Section II.A.

> (1) Shall provide a copy of the new key to the tenant who made the request for the change of locks at a mutually agreed time not to exceed 48 hours following the lock change; and
> (2) May charge a fee to the tenant not exceeding the reasonable cost of changing the locks.
>
> **Fee due within 45 days**
> (e)
> (1) If a landlord charges a fee to the tenant for changing the locks on a tenant's leased premises under subsection (d) of this section, the tenant shall pay the fee within 45 days of the date the locks are changed.
> (2) If a tenant does not pay a fee as required under paragraph (1) of this subsection, the landlord may:
> (i) Charge the fee as additional rent; or
> (ii) Withhold the amount of the fee from the tenant's security deposit.[294]

Though an excellent start, Maryland's law falls slightly short of the mark in that it fails to protect landlords from liability for wrongfully evicting the abuser.[295] Language borrowed from Indiana's lock change law can effectively fill this gap. The Indiana Code § 32-31-9-10 provides:

> (d) A landlord to whom subsection (b) applies is immune from civil liability for:
> (1) excluding the perpetrator from the dwelling unit under a court order; or
> (2) loss of use of or damage to personal property while the personal property is present in the dwelling unit.
> (e) A perpetrator who has been excluded from a dwelling unit under this section remains liable under the lease with all other tenants of the dwelling unit for rent or damages to the dwelling unit as provided in the lease.[296]

C. Benefits for Landlords and Tenants

A uniform lock change law would have obvious benefits for domestic violence victims, but landlord could also benefit from the type of legislation proposed above. First, establishing a single, national standard would limit uncertainty by making it

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[294] REAL PROP. § 8-5A-06.
[295] *See supra* notes 277–81 and accompanying text.
[296] IND. CODE ANN. § 32-31-9-10 (West 2021).

easier for landlords to follow the law. This would be especially true for landlords who own multiple properties in different states. If every state used the same lock change law, these individuals would not have to expend resources learning several different rules and could operate more efficiently.

Second, the model law includes provisions designed to hold tenants accountable for costs associated with lock changes. Though the landlord may have to cover the costs initially, the model law's "45 Day" provision all but guarantees that he will get his money back with minimal effort. Third, the proposed law effectively shields the landlord from liability for locking out the abuser. So long as the tenant provides the required paperwork, the landlord cannot be sued for excluding her abuser. If the tenant fails to provide this paperwork, the landlord is excused from the duty to comply with her request. Finally, the model law ensures that the landlord will continue to have access to the abuser's financial resources for lease-related expenses. This limits the amount of risk imposed on the landlord while still ensuring the tenant's safety.

CONCLUSION

It is well established that landlords bear some responsibility for their tenants' safety.[297] Most states now recognize that landlords have an implied, contractual duty to both install and maintain basic security systems on their rental properties.[298] And, as the caselaw discussed in this Note suggests, a number of courts have demonstrated their willingness to hold landlords accountable if they fail to meet this burden.[299]

This same caselaw also suggests that a landlord could face liability under the IWH if he fails to comply with a tenant's lock change request.[300] The risk of liability is especially high when the requesting tenant is a domestic violence victim looking to exclude her abusive partner from a shared apartment.[301] If the landlord does not perform the lock change, he could be held liable

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[297] *See supra* Part II.
[298] *See supra* Section II.A.
[299] *See supra* Parts I and II.
[300] *See* Smith v. Lagow Const. & Dev. Co., 642 N.W.2d 187, 191–93 (S.D. 2002).
[301] *See supra* Part III.

for a breach of the implied warranty.[302] If the tenant is injured as a result of the landlord's inaction, the landlord could also face significant tort liability.[303]

If, on the other hand, the landlord does comply with the tenant's request, he could be liable to the abuser for executing an illegal lockout eviction.[304] Thus, the current scheme leaves landlords stuck between a rock and a hard place. No one benefits and everyone is placed at a heightened level of risk. The most effective way to address this problem would be to create a uniform lock change law that provides additional safeguards for landlords so that they, in turn, can effectively protect their tenants.

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[302] *See supra* Section III.B.
[303] *See supra* Section III.B.
[304] *See supra* notes 277–81 and accompanying text.