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## Retaliatory Evictions: A Study of Existing Law and Proposed Model Code

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## RETALIATORY EVICTIONS: A STUDY OF EXISTING LAW AND PROPOSED MODEL CODE.

*T* rents an apartment in a crowded urban center. After living in the apartment for a period of time, he notices serious defects which amount to violations of the housing code. Unsuccessful in his attempts to have the defects repaired by his landlord *L*, *T* reports the violations to the authority charged with enforcement of the housing code. *L*, upon learning of *T*'s action, gives him the normal thirty days notice to vacate. *T* refuses to vacate, and at the end of the period, *L* brings an action for eviction. This is a simplified fact situation involving a retaliatory eviction.

A retaliatory eviction is most likely to occur in a low rent housing area where the landlord is unwilling to make repairs because of the low return on investment.<sup>1</sup> In this situation the retaliatory eviction is an extremely useful tool in the hands of the landlord, for not only can he rid himself of a bothersome tenant, but also he is able to utilize such an action as a warning to other tenants. This warning tends to discourage future reports to the authorities, thereby avoiding further expenditures. Retaliatory evictions are especially effective in overcrowded urban centers where low rent housing is relatively scarce, and the threat of eviction is even more meaningful.

While the problem of retaliatory evictions is factually simple, the solution is more complex. Initially the solution gives rise to a conflict between the traditional viewpoint of landlord-tenant relations, which would allow the landlord to evict for any reason or no reason at all, even for a retaliatory purpose,<sup>2</sup> and a modification of this view which would limit the powers of the landlord in dealing with his own property. While the problem begins as one between two individuals, ultimately the public becomes involved. If these actions of the landlord are supported, the end result is an obstruction of the effective enforcement of housing codes<sup>3</sup>

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1. Kahn, *We Need More Slumlords*, 239 SATURDAY EVENING POST 8 (Dec. 17, 1966), in A. CASNER & W. LEACH, *CASES AND TEXT ON PROPERTY* 508 (1969).

2. *Fowel v. Continental Life Ins. Co.*, 55 A.2d 205 (D.C. Mun. Ct. App. 1947).

3. Complaints to the authorities charged with the effective enforcement of the housing codes comprise a sizeable portion of the violations handled by these agencies. For example, in Washington, D.C., during 1966 the Department of Licenses and Inspections handled 42,355 violations of which 14,834 (approximately 35%) were brought to the attention of the department by way of complaint. *Hearings on S. 2331, S. 3549 and*

and a frustration of public policy aimed at reducing substandard housing.<sup>4</sup>

The issue of retaliatory evictions has been approached from three bases: (1) case law dealing with the problem from the points of view of both the private landlord and the government as a landlord;<sup>5</sup> (2) statutes, which in several jurisdictions afford relief from retaliatory evictions; (3) proposed legislation<sup>6</sup> and a proposed model code.<sup>7</sup> This discussion is intended to evaluate the current law and proposed model code, to determine the adequacy of the current law and the advantages to be secured by the adoption of the proposed code.

#### APPROACH OF THE COURTS

The traditional approach of the courts has been to sustain an eviction by a private landlord regardless of the reason given as the grounds for the eviction.<sup>8</sup> Recent decisions, however, show a departure from the traditional approach. In the leading case of *Edwards v. Habib*,<sup>9</sup> the tenant rented a dwelling house from the defendant-landlord on a month-to-month tenancy. After taking possession of the premises, she reported numerous violations to the Housing Division of the Department of Licenses and Inspections of the District of Columbia, which inspected the premises and directed the landlord to remedy all discrepancies. The

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*S. 3558 Before the Subcomm. on Business and Commerce of the Senate Comm. on District of Columbia*, 89th Cong., 2d Sess., at 52 (1966) [hereinafter cited as *1966 Hearings*].

4. The slow rate of housing replacement makes code enforcement essential to preserve decent housing in good neighborhoods, to prevent the deterioration of decent or salvageable housing to the point where it can no longer be reclaimed, and, finally, to compel the basic decencies and minimal standards of healthful living in buildings which, although no longer salvageable, must serve as habitations until they can be razed and replaced.

Gribetz & Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254, 1257 (1966).

5. A retaliatory eviction which occurs under circumstances in which the government is the landlord involves aspects which are significantly different from those found in situations where the landlord is a private individual. For this reason the situation where the government is the landlord will not be considered. For a discussion of eviction procedures in public housing, see Comment, *Eviction Procedures In Public Housing*, 73 DICK. L. REV. 307 (1969).

6. H.R. 257, 90th Cong., 1st Sess. (1967).

7. A.B.F., MODEL RESIDENTIAL LANDLORD-TENANT CODE (Tent. Draft 1969).

8. *Snitman v. Goodman*, 118 A.2d 394 (D.C. Mun. Ct. App. 1955); *Fowel v. Continental Life Ins. Co.*, 55 A.2d 205 (D.C. Mun. Ct. App. 1947); *Warthen v. Lamas*, 43 A.2d 759 (D.C. Mun. Ct. App. 1945); *De Wolfe v. McAllister*, 229 Mass. 410, 118 N.E. 885 (1918).

9. 397 F.2d 687 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016 (1969).

tenant was then given thirty days notice to quit<sup>10</sup> and upon her refusal, a default judgment was entered against her in accordance with the applicable summary eviction statute.<sup>11</sup> The court then granted the tenant's request to reopen the judgment on the grounds that proof that the landlord evicted her in retaliation for the reporting of housing violations would constitute a defense to an eviction action.<sup>12</sup> The trial court on rehearing, ruled any evidence related to the reasons for the eviction inadmissible and directed a verdict for the landlord. Appeal was taken to the District of Columbia Court of Appeals which affirmed the decision of the trial court.<sup>13</sup> The court, in holding against the tenant, noted that, although the landlord did not have an absolute right to terminate a tenancy,<sup>14</sup> if the respective rights of landlords and tenants were to be modified further, the alteration should be accomplished by the appropriate legislative body and not by judicial edict.<sup>15</sup>

Further appeal was taken to the United States Court of Appeals for

10. A tenancy from month to month, or from quarter to quarter, may be terminated by a thirty days' notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case, on the day of the month from which such tenancy commenced to run.

D.C. CODE ANN. § 45-902 (1968).

11. Whenever a lease for any definite term shall expire, or any tenancy shall be terminated by notice as aforesaid, and the tenant shall fail or refuse to surrender possession of the leased premises, the landlord may bring an action of ejectment to recover possession in the United States District Court for the District of Columbia; or the landlord may bring an action to recover possession before the District of Columbia Court of General Sessions as provided in sections 11-701 to 11-749.

*Id.* § 45-910 (1968).

12. *Habib v. Edwards*, Civil No. LT75895-'65 (D.C. Ct. Gen. Sess. Oct. 27, 1965) in 1966 *Hearings*, *supra* note 3, at 172.

13. *Edwards v. Habib*, 227 A.2d 388 (D.C. Ct. App. 1967).

14. There are three distinct lines of cases wherein the landlord's right to terminate a tenancy has been limited. The first of those is where a governmental body is landlord . . . .

The second line of cases deals with emergency rent control legislation restricting the contractual rights of landlords . . . .

The third line of cases deals with actions involving the eviction of tenants in apparent retaliation for their registering or voting . . . .

One case, not falling within any of the above groupings, is that of *Abstract Investment Co. v. Hutchinson*, 204 Cal. App. 2d 242, 22 Cal. Rptr. 309 (1962), where a tenant was permitted to show as a defense that his eviction was sought solely because of his race.

*Id.* at 390-91.

15. *Id.* at 392.

the District of Columbia<sup>16</sup> which refused to give effect to the retaliatory eviction.<sup>17</sup> This holding was reached on the ground that the promulgation of a housing code impliedly effected a change in the rights between landlord and tenant.<sup>18</sup> The court discussed the constitutional issues raised by the tenant<sup>19</sup> but declined to rest its decision on such issues, relying upon statutory construction as the basis for its decision.<sup>20</sup>

Following the lead of the *Edwards* decision the court in *Portnoy v. Hill*,<sup>21</sup> a New York case of first impression, held for the tenant. In so holding, the court relied heavily on the federal court of appeals decision in *Edwards*. It held that while the defense of retaliatory eviction had no basis in law, it could be raised as an equitable defense in a summary eviction proceeding.<sup>22</sup> The court based its decision on both public policy and statutory authority, although it did not mention such authority specifically.<sup>23</sup>

All courts have not been willing, however, to openly apply the principles of *Edwards*. The Court of Appeal of Florida for the Third District, refused to rule in favor of a tenant who was evicted after ". . . having reported to the Miami Fire Department that the electrical system in his apartment was outmoded, inadequate, and dangerous."<sup>24</sup> The court stated that the defendant alleged only a dangerous electrical system which had been reported to the fire department and not a violation of any city or county code, and that the court would not take judicial notice of a municipal code. On this basis it concluded that the tenant-defendant failed to raise a defense in his answer and it refused to rest

16. *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968).

17. ". . . [W]hile the landlord may evict for any legal reason or for no reason at all, he is not, we hold free to evict in retaliation for his tenant's report of housing code violations to the authorities." *Id.* at 699.

18. *Id.* at 690.

19. Mrs. Edwards contended that if support were given to the eviction by the courts, based as it was upon a retaliatory motive, such action would constitute state action as in *Shelley v. Kraemer*, 334 U.S. 1 (1948), and would be violative of her constitutionally protected right of free speech. 397 F.2d at 690-91. She further argued that even if *Shelley* were to be narrowly interpreted and thus not applicable, she had a right as a federal citizen to inform the government of violations of the law and such right could not be limited by private interference. Her argument here was based on *In re Quarles and Butler*, 158 U.S. 532 (1895) 397 F.2d at 697.

20. The court construed the statute in the light of public policy and congressional intent to secure safe and sanitary places to live for the residents of the city. *Id.* at 700.

21. 57 Misc. 2d 1097, 294 N.Y.S.2d 278 (Binghamton City Ct. 1968).

22. *Id.* at —, 294 N.Y.S.2d at 281.

23. "Not only may we rely on public policy and the need for improving and upgrading housing but it also seems quite clear that there is statutory authority allowing it." *Id.*

24. *Wilkins v. Tebbetts*, 216 So.2d 477, 478 (Fla. Dist. Ct. App. 1968).

its decision on information not contained in the pleadings.<sup>25</sup> The question of whether or not the *Edwards* doctrine would find acceptance by Florida courts was left open for a future decision.<sup>26</sup> The dissent, however, felt that the present case was appropriate for the application of the *Edwards* doctrine.<sup>27</sup>

It can readily be seen that although there is hope for the predicament of the tenant, few courts have taken action in the absence of statutory authority. The central question is whether or not other courts will feel that there is sufficient public policy interest to be served, and sufficient legislative intent to be found in the various housing codes to compel them to alter the legal relationships between landlords and tenants.

Although some case law has developed in favor of judicial prevention of retaliatory evictions, there is still a strong nucleus of those who feel that the courts are not the proper places in which to resolve such a conflict.<sup>28</sup> The opposition to judicial resolution does not appear to be directed toward the substantive idea but toward the method of effecting such a proposal. It is felt that the proper way to resolve the problem is by legislative enactment.<sup>29</sup>

#### STATUTORY AUTHORITY PROHIBITING RETALIATORY EVICTIONS

There currently exists statutory authority which would afford relief to those tenants who find themselves victims of a retaliatory eviction.<sup>30</sup>

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25. *Id.* at 479.

26. "The record on appeal is not sufficient for us to determine whether *Edwards* . . . is applicable." *Id.* at 478.

27. From the record it appears obvious that the appellant was being evicted because he "blew the whistle" on the landlord by reporting a dangerous electrical wiring deficiency in the premises . . . . I feel that in an appropriate case such as this, the rule announced in *Edwards v. Habib* . . . should be given application.  
*Id.* at 479 (dissenting opinion).

28. "Basically at issue between my colleagues and me is a question as to the extent to which the power of the court may here be exercised where by their edict the landlord's right to his property is being denied." *Edwards v. Habib*, 397 F.2d at 703 (dissenting opinion).

29. "If, as some believe, the law relating to landlords and tenants is outdated, it should be brought up-to-date by legislation and not by court edict." *Edwards v. Habib*, 227 A.2d at 392. "Just as do my colleagues, I deplore the effort of any landlord for a base reason to secure possession of his own property, but if his right so to recover in accordance with our law is to be denied, Congress should provide this basis." *Edwards v. Habib*, 397 F.2d at 704 (dissenting opinion).

30. The following citations of statutory provisions are not intended to be exhaustive of those statutes affording relief from retaliatory evictions in all jurisdictions. They

The nature and scope of the statutes in various jurisdictions differ greatly. There are those which, while not enacted specifically to afford a remedy for retaliatory evictions, could be applied in such situations;<sup>31</sup> those which have provisions prohibiting retaliatory evictions incidental to other related statutory provisions;<sup>32</sup> and statutes which have been enacted for the sole purpose of preventing retaliatory evictions.<sup>33</sup>

*States Not Specifically Preventing Retaliatory Evictions.*

In Connecticut, a tenant victimized by a retaliatory eviction would be able to resort to the courts for protection afforded by that state's Summary Process statute.<sup>34</sup> This law does not specifically provide protection against retaliatory evictions but *could* be invoked at the discretion of the court to render temporary relief to the tenant. Under this statute, where a judgment for possession or occupancy of premises used for dwelling purposes has been rendered, the evicted tenant may apply to the court for a stay of execution. The applicant must show that he has used due diligence and reasonable effort to secure suitable premises within the city or town, or a neighboring city or town, and in a comparable neighborhood, and that the application is made in good faith. Upon receipt of the application the court will weigh the equities involved and may stay the execution for a period not to exceed six months. The tenant is further protected because any provision in his lease which purports to act as a waiver of his rights to have execution of an eviction stayed is void as against public policy.<sup>35</sup>

A similar statute has been enacted in Massachusetts.<sup>36</sup> The only significant difference between the two is the maximum time period for which the stay of execution may be granted.<sup>37</sup> While both of these provisions could be invoked to aid an evicted tenant, they lack a set of

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comprise a survey designed to exemplify the possible solutions afforded by statutes currently in force.

31. CONN. GEN. STAT. ANN. § 52-546 (Supp. 1969); MASS. GEN. LAWS ANN. ch. 239 § 9 (Supp. 1969).

32. MASS. GEN. LAWS ANN. ch. 111 § 127F (Supp. 1969); PA. STAT. ANN. tit. 35 § 1700-1 (Supp. 1969).

33. ILL. STAT. ANN. ch. 80 § 71 (1966); MICH. GEN. LAWS ANN. 600.5646(4), (5) (Supp. 1969).

34. CONN. GEN. STAT. ANN. § 52-546 (Supp. 1969).

35. *Id.* § 52-548 (1960).

36. MASS. GEN. LAWS ANN. ch. 239 § 9 (Supp. 1969).

37. The maximum aggregate period of stay has varied but is currently three months. *Id.*

definitive rules which would assure protection for a tenant faced with such an eviction.

*Statutes With Incidental Provisions Prohibiting Retaliatory Evictions.*

A second type of statutory protection afforded the tenant who has been evicted on retaliatory grounds can be found in legislation which is not primarily designed for the prevention of retaliatory eviction, but which contains incidental provisions. Statutes of this type in Pennsylvania<sup>38</sup> and Massachusetts<sup>39</sup> provide for a suspension of the obligation of the tenant to pay rent to the landlord after the Public Health Department certifies that the dwelling is unfit for human habitation. During the period of suspension, the rents are paid into an escrow account<sup>40</sup> or to the clerk of the court.<sup>41</sup> The Pennsylvania statute provides that, "no tenant shall be evicted for any reason whatsoever while rent is deposited in escrow."<sup>42</sup> The Massachusetts provision concerning evictions is broader in scope. It not only prohibits an eviction during the period in which the rent is being paid into court, but also prohibits an eviction for a nine month period after the order to pay into the court ceases to be operative.<sup>43</sup> These statutes provide a degree of protection for the tenant but they are insufficient. The weakness of the Pennsylvania statute lies in the fact that the landlord can repair the premises, have them certified by the Public Health Department, and evict the tenant, who is no longer protected by the statute. The Massachusetts statute, while affording protection to the tenant against retaliatory evictions, primarily focuses its stay of execution on those actions brought upon a notice to quit for non-payment of rent.<sup>44</sup>

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38. PA. STAT. ANN. tit. 35 § 1700-1 (Supp. 1969).

39. MASS. GEN. LAWS ANN. ch. 111 § 127F (Supp. 1969).

40. PA. STAT. ANN. tit. 35 § 1700-1 (Supp. 1969).

41. MASS. GEN. LAWS ANN. ch. 111 § 127F (Supp. 1969).

42. PA. STAT. ANN. tit. 35 § 1700-1 (Supp. 1969).

43. MASS. GEN. LAWS ANN. ch. 111 § 127F (Supp. 1969).

44. While the tenant is making payments into a district court (or the Superior Court) and for nine months following the termination of the court's order, the law affords him a mandatory stay of judgment and execution in a Summary Process action based on a notice to quit for nonpayment of rent. St. 1965, c. 898, § 4, as affecting G.L. c. 111, § 127F. But this law does not make provision for such a stay in an action based on notice to quit equivalent to the rent period. In this latter instance, however, the Summary Process law empowers the court to grant a *discretionary* stay for as much as three months. G.L. c. 239, § 9 as amended by St. 1967, c. 26.

Angevine & Taube, *Enforcement of Public Health Laws—Some New Techniques*, 52 MASS. L.Q. 205, 221 (1967).

*Statutes Expressly Prohibiting Retaliatory Evictions.*

Illinois has enacted a statute designed to protect the rights of tenants who make bona fide complaints to the proper authorities concerning violations of governmental regulations. The statute sets forth the proposition that it is against the public policy of the state for the landlord to terminate or refuse to renew a lease on the ground that the tenant has reported violations of the applicable building code or similar regulation, and declares such termination or refusal void.<sup>45</sup> This statute clearly establishes a policy against retaliatory evictions, but fails to provide much needed provisions concerning the statute's application. This omission leaves unanswered such questions as: How long after reporting a housing violation will the tenant be protected against eviction? And, although the tenant has made a report, may he be evicted for any other valid reason? Solutions for administrative problems raised by questions such as these must be provided before a statute can be effective.

Perhaps the most comprehensive statute dealing with retaliatory evictions is one recently enacted in Michigan.<sup>46</sup> It provides that in an action by a landlord to gain possession of premises from a tenant, where it appears by a preponderance of the evidence that any of the following situations exist, judgment shall be entered for the defendant: (1) the eviction was a penalty for the tenant's attempt to secure or enforce any right under a lease or contract, or a right provided for by the laws of the United States, the state of Michigan or its governmental subdivisions;<sup>47</sup> (2) the eviction was a penalty for the tenant's complaint to a governmental authority of a violation of any health or safety code;<sup>48</sup> (3) the eviction was in retaliation for any other lawful act arising out of the tenancy;<sup>49</sup> (4) the landlord was a governmental unit and the tenancy was terminated without cause.<sup>50</sup>

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45. It is declared to be against the public policy of the State for a landlord to terminate or refuse to renew a lease or tenancy of property used as a residence on the ground that the tenant has complained to any governmental authority of a bona fide violation of any applicable building code, health ordinance, or similar regulation. Any provision in any lease, or any agreement or understanding, purporting to permit the landlord to terminate or refuse to renew a lease or tenancy for such a reason is void.

ILL. STAT. ANN. ch. 80 § 71 (1966).

46. MICH. GEN. LAWS ANN. 600.5646 (Supp. 1969).

47. *Id.* 600.5646(4) (a).

48. *Id.* 600.5646(4) (b).

49. *Id.* 600.5646(4) (c).

50. *Id.* 600.5646(4) (d).

The Michigan statute goes a step further in protecting the rights of the tenant by providing that when an increase in the obligations of the tenant is instituted by the landlord for any of the enumerated reasons,<sup>51</sup> and an action to regain possession is brought because the tenant has failed to comply, judgment shall be rendered for the tenant. The additional obligations shall also be declared void.<sup>52</sup> This protection from retaliatory rent increases is a significant provision. Any statute which prohibits retaliatory evictions without also prohibiting retaliatory rent increases provides little protection for the tenant. Retaliatory eviction statutes provide protection primarily for those tenants residing in low rent housing, where these evictions are most likely to occur. The tenants in this type of housing are likely to have lower incomes and would be adversely affected by even a small rent increase. Thus a statute preventing retaliatory evictions would not accomplish its purpose if the landlord could merely increase the rent, thereby placing a heavy burden on the tenant and possibly forcing him to surrender the premises. A weakness of the Michigan statute is its failure to provide any specific terms regarding the length of time the tenant will be protected after he has reported a violation. Additionally, under this statute the tenant must show by a preponderance of the evidence that the eviction is retaliatory. To prove such a retaliatory intent could be quite difficult. A better approach might be to provide that an eviction within a stated period, such as six months after the report, would give rise to a presumption that the eviction was retaliatory and the burden is on the landlord to show that it was not.

It can be seen from the foregoing study of the existing statutory provisions that the problem of retaliatory evictions has not been adequately solved. As has been shown above, each has provided a degree of relief but none is sufficiently comprehensive to afford the tenant the protection he needs.<sup>53</sup> Due to the inadequacy of the existing law, a legislature

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51. See text accompanying notes 47-50 *supra*.

52. MICH. GEN. LAWS ANN. 600.5646(5) (Supp. 1969).

53. A bill relating to the District of Columbia, which possessed the requisite comprehensiveness to offer a high degree of protection to the tenant was introduced in Congress by Mr. Bennett. H.R. 257, 90th Cong., 1st Sess. (1967). This bill was not re-introduced in the 91st Congress. Letter from Charles E. Bennett to Bruce E. Titus, August 16, 1969, on file in the offices of the William and Mary Law Review. For a detailed discussion of H.R. 257, see Note, *Retaliatory Evictions and the Reporting of Housing Code Violations in the District of Columbia*, 36 GEO. WASH. L. REV. 190 (1967).

attempting to reach a statutory solution to the problem of retaliatory evictions must look to a proposed model code as a guide for legislation.

#### PROPOSED MODEL CODE

A recent development in the area of landlord-tenant law is the publication of the Model Residential Landlord-Tenant Code.<sup>54</sup> While the express purpose of the model code is not to serve as a proposal for legislation, but rather as a vehicle for the promotion of discussion toward possible reforms,<sup>55</sup> it is worthy of consideration by those legislatures contemplating a reform of existing landlord-tenant law. The section of the model code relating to retaliatory evictions<sup>56</sup> is more comprehensive than any of the existing statutes previously discussed.

The code provides that for as long as the tenant tenders payment of rent or receipts for rent lawfully withheld, the landlord may not bring an action against the tenant to recover possession or otherwise cause the tenant to abandon the premises involuntarily. Nor may he increase the tenant's rent or decrease the services to which the tenant is entitled. These acts are prohibited within six months of any of the following occurrences: (1) a good faith complaint by the tenant of a violation of a housing or sanitary code to the authority charged with the enforcement of such code; (2) the filing of a notice or complaint of a housing or sanitary code violation by the enforcement agency; or (3) a good faith request for repairs made by the tenant to the landlord.<sup>57</sup>

A significant aspect of the model code is the clarity with which its provisions delineate the relative rights of the landlord and tenant concerning the reporting of housing code violations. Besides clearly stating the circumstances under which the tenant will not be subject to acts of retaliation by the landlord, the code, with respect to the landlord's right to deal with his own property and to contract freely, enumerates those situations in which the landlord will be able to evict the tenant<sup>58</sup> or raise the tenant's rent,<sup>59</sup> regardless of prior actions which under these provisions would render the tenant immune to evictions or rent increases. Notwithstanding the fact that the eviction is one which the model code would ordinarily classify as retaliatory, the landlord would

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54. A.B.F., MODEL RESIDENTIAL LANDLORD-TENANT CODE (Tent. Draft 1969).

55. *Id.* at 11.

56. *Id.* § 2-407.

57. *Id.* § 2-407(1).

58. *Id.* § 2-407(2).

59. *Id.* § 2-407(4).

be able to regain possession of the premises if: (1) the tenant is committing waste or a nuisance, using the premises for an illegal purpose or using the premises for other than dwelling purposes in violation of the rental agreement; (2) the landlord in good faith seeks to recover the premises for immediate use for his own dwelling; (3) the landlord in good faith seeks to recover the premises to substantially alter or demolish them; (4) the landlord in good faith seeks to recover the premises to terminate their use as a dwelling for a period of at least six months; (5) the complaint or request for repair relates to a condition that was caused by the tenant or another person in his household; (6) the condition of the premises was in compliance with the applicable codes, statutes, and ordinances at the time the complaint was made; (7) the landlord in good faith has contracted to sell the premises and the purchaser desires to use the premises in accordance with (1), (2), or (3) above; or (8) the notice to terminate was given prior to the time when the complaint was made.<sup>60</sup> Additionally, the landlord would be allowed to raise the tenant's rent notwithstanding a situation which would normally be considered retaliatory by the model code if: (1) the condition of the premises was in compliance with the applicable codes, statutes, and ordinances at the time the complaint was made; (2) the landlord has become liable for increased property taxes or other maintenance or operation costs not associated with the tenant's complaint, not less than four months prior to the demand for an increase in rent and such increase is not greater than the tenant's pro rata portion of the increase in taxes or costs; (3) the landlord has made substantial capital improvements of the premises not less than four months prior to the demand for increased rent and the amount of the increase does not exceed the amount which may be claimed as depreciation for federal income tax purposes; (4) the complaint or request for repair relates to a condition that was caused by the tenant or another person in his household; (5) the landlord can show that the increased rent does not exceed the rent being paid by other tenants occupying similar premises in the same building, or, if the premises are a single family dwelling, that the rent does not exceed the fair market value for the premises.<sup>61</sup>

Another feature of the model code is the sanction it provides against a landlord who is unwilling to comply with its mandates. A tenant, against whom action is taken in violation of the provisions of the code,

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60. *Id.* § 2-407(2).

61. *Id.* § 2-407(4).

would be entitled to recover the greater of three months rent, or treble damages, including the costs of the suit and attorney's fees.<sup>62</sup>

The above provisions of the model code would afford the tenant protection from retaliatory evictions by explicitly defining those actions of the landlord which are retaliatory, providing remedies for the tenant against whom such actions are taken and penalties for those landlords who take such actions.

### CONCLUSION

Success in prohibiting retaliatory evictions requires more than a mere assertion that such actions are violative of public policy and will not be given effect in court actions. The problem is too complex for such a solution. For this reason the solution would be more easily and effectively reached by means of legislative enactment. At the present time, however, there are few states whose codes offer any aid to the tenant, and it would be unrealistic to expect that this situation will change radically in the near future. As an interim measure, courts, when faced with a case involving retaliatory eviction, should not hesitate to take action, as did the *Edwards*<sup>63</sup> court, and provide protection for the aggrieved tenant.

The American Bar Foundation's Model Residential Landlord-Tenant Code provisions applying to retaliatory evictions, if enacted, would succeed in securing the public policy goal of facilitating the enforcement of housing and sanitary codes, while simultaneously protecting the rights of both the landlord and the tenant. This model code is superior to the statutes currently in force for several reasons. First, it more explicitly defines the relationship of the landlord and tenant concerning evictions. There is no problem distinguishing the situations in which the tenant may look to the court for aid from those in which the landlord's property rights will be supported. Second, the model code, in addition to prohibiting retaliatory evictions, also prohibits retaliatory rent increases. This is a significant feature because if a statute prohibits only retaliatory evictions, the landlord can accomplish the same result by raising the rent. The third significant aspect of the model code is the sanction against landlords who refuse to comply with its provisions. A tenant is clearly benefited by a remedy which prevents his eviction on retaliatory grounds for a period such as six months. But this merely

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62. *Id.* § 2-407(3).

63. *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969).

gives him a reasonable period in which to secure another dwelling. The provision for treble damages, however, provides an economic sanction against the non-complying landlord which, while affording relief to the tenant, will also be more likely to succeed in preventing retaliatory evictions. A legislative body contemplating the enactment of a statute prohibiting retaliatory evictions, would be remiss if it failed to give due consideration to the applicable provisions of the Model Code.

BRUCE E. TITUS