

William & Mary Law Review

Volume 11 (1969-1970)
Issue 3

Article 12

March 1970

Rent Strike - Landlord's Remedies

G. Richard Gold

Follow this and additional works at: <https://scholarship.law.wm.edu/wmlr>



Part of the [Legal Remedies Commons](#)

Repository Citation

G. Richard Gold, *Rent Strike - Landlord's Remedies*, 11 Wm. & Mary L. Rev. 740 (1970),
<https://scholarship.law.wm.edu/wmlr/vol11/iss3/12>

Copyright c 1970 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmlr>

RENT STRIKE—LANDLORD'S REMEDIES

Traditionally, the landlord-tenant relationship has been tainted by mistrust and friction, each side viewing the other as an adversary. Few people would question the fact that today there are numerous tenants living in substandard housing and paying exorbitant rent for such places in which to live and raise their families. This type of situation has often directed the cry of "slumlord" toward many landlords, with few people stopping to view the problems from the landlords' position, or more importantly, from an impartial legal perspective rather than solely a legislative or sociological standard.

This article will not attempt to discuss social wrongs or their underlying reasons, for the weight of recent literature on landlord-tenant relationships has thoroughly covered this aspect.¹ This is not to imply that the legal and sociological aspects can be completely separated, for they are interwoven in such a manner as to make this impossible. The object of this research is to point up the law as it exists and to recommend a possible expansion of remedies in certain areas—specifically, a landlord's remedies to an illegal rent strike.

The rent strike considered here is one in which the landlord is faced with collective action by a large number of tenants. It is the coercive force of this collectiveness which places the landlord in an unfair bargaining position and which may impel him to concede to arbitrary demands, despite the fact that could he afford to engage in the necessary legal suits, he would undoubtedly prevail. As will be shown, the present remedies available to the landlord are inadequate to deal with a collective threat such as is found in a rent strike. When rent is withheld by an individual tenant or a few tenants, the landlord can look to a court of law, but as the numbers involved in the rent strike increase, the adequacy of the landlord's remedies decreases proportionately. Even where the courts are not sympathetic to the strikes, rent

1. Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964); Schoshinski, *Remedies of the Indigent Tenant: Proposal For Change*, 54 GEO. L.J. 519 (1966); Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968); Comment, *Rent Withholding and the Improvement of Substandard Housing*, 53 CALIF. L. REV. 304 (1965). These articles and others have approached the housing question from a strong sociological standpoint. This in no way means that their viewpoint is not valuable, but it is felt that a strict legal perspective is needed as well. The landlord in most writings is given little opportunity to argue his case.

withholding can be effective, simply by making use of the delays built into court processes.

The legal remedies available to the landlord all require separate actions against each individual tenant who is withholding rent. This requirement enables tenants to coordinate their withholding so as to force the landlord to maintain continuous involvement in suits for rent payment. Likewise, simple manipulation of time of payment can negate the landlord's action for rent payment. For example, Tenant A withholds rent until the landlord sues, but prior to judgment, Tenant A pays the rent owed and then Tenant B initiates the cycle which Tenant A has just completed. The landlord must now institute a new proceeding against Tenant B. As the number of tenants withholding in this manner increases, the landlord's opportunity to find relief through separate actions diminishes. How long can the average landlord afford such a collection procedure?

Because of a lack of specific legislative guidelines, there has been inconsistent treatment given both the landlord and the tenant by courts which have found themselves forced to legislate on a case by case basis. It becomes evident that this situation has compounded the problem facing landlords and tenants.

It is the contention of this article that the legal and equitable remedies presently available to the landlord are inadequate, and that the handling of rent strikes, either in court or out of court, without specific guidelines is unsatisfactory. Therefore, this research has as its objective the showing of a need for statutory enactment of a method whereby both the landlord and the tenant will be able to settle disputes in a simplified and just manner.

HISTORICAL PERSPECTIVE

The rent strike concept has developed over the past several decades.² Following World War I the country found itself with a housing shortage, the result of which was the frequent occurrence of rent strikes. In cities such as Chicago, Cleveland, Washington, and New York rent strikes were recorded during the early 1960's.³ More recently,

2. The terms rent strike and rent withholding are used interchangeably throughout this article. Simply defined, the terms mean the refusal of several tenants to pay the landlord rent which has accrued. The obvious aim of such withholding is to force the landlord into agreeing to the tenant demands, or in the alternative, face the mammoth task of suing each individual tenant concerned. This alternative often places the landlord in the precarious position of facing financial ruin or agreeing to the demands.

3. See Note, *Rent Withholding—A Proposal For Legislation in Ohio*, 18 CASE W. RES. L. REV. 1705 (1967). The author of the aforementioned article claims that rent with-

Philadelphia, St. Louis, and Muskegon Heights, Michigan, have witnessed the powerful effects of tenant rent withholding. An instance of rent withholding about which considerable information is available is the strike undertaken by the Coronet Village Improvement Association of Harvey, Illinois.⁴ Each of these confrontations between landlord and tenant has raised the same question: Is rent withholding legal?

AT COMMON LAW

The basic question surrounding the landlord-tenant relationship is whether this relationship sounds in contract or is one of property conveyance. The law is settled that a lease is to be treated as a conveyance of an interest in property and that the tenant is the owner of an estate in real property for a limited period of time.⁵

Secondly, it must be asked whether the covenants which are part of the property conveyance are independent or dependent, and whether the breach of a covenant or stipulation by the landlord is a defense to a claim for rent. This question usually arises in regard to the making of repairs and improvements.⁶ Again, the law is well settled that covenants are to be construed as independent.⁷ Covenants in a lease are independent of the basic tenurial relationship and independent of each other.⁸ Thus, if the landlord covenants to make repairs and the tenant covenants to pay rent, the failure of the landlord to repair is not a defense to the tenant's later breach of the covenant to pay

holding has been responsible for not only the adoption of withholding statutes by such states as New York and Illinois, but also the marked improvement in tenant housing elsewhere. This raises the question of whether the end justifies the means when, in fact, the means may be illegal. See *U.S. News and World Report*, Oct. 20, 1969, at 31-33.

4. Cornfield, *Tenants Save Their Community*, 1 CIVIL RIGHTS DIG. 1 (1968); Sem-bower, *Landlord-Tenant Arbitration*, 24 ARB. J. 35 (1969). This experiment in rent withholding appears to have produced a favorable result—at least for the tenants. A year long series of sustained and determined efforts by the tenants culminated in an unprecedented agreement. Major repairs were instituted, rents were lowered, grace periods were allowed for those falling behind in rent, and in general, a ghetto was transformed into what is described as a model community. The distinguishing factor, however, is that the landlord in this instance was a governmental agency which had taken over the housing area after financial failure of a private landlord.

5. See 1 H. TIFFANY, REAL PROPERTY § 81 (3rd ed. 1939).

6. *Lipkin v. Burnstine*, 18 Ill. App. 2d 509, 152 N.E.2d 745 (1958); *Geo. Benz & Sons v. Hassie*, 208 Minn. 118, 293 N.W. 133 (1940); *Slovak Catholic Sokol, Inc. v. Ryff*, 17 N.J. Misc. 82, 4 A.2d 849 (Dist. Ct. 1939).

7. Cases cited note 6 *supra*.

8. H. TIFFANY, *supra* note 5, at § 81.

rent. The tenant must maintain independent action to recover damages for the landlord's breach of covenant.⁹

At common law, the lessee is bound by an express covenant to pay rent even if the premises should be destroyed.¹⁰ Under this rule, absent any agreement to the contrary, the lessee remains liable for payment of rent even though the destruction was not his fault.¹¹

When an interest in land is conveyed, the law applies the doctrine of *caveat emptor*.¹² This doctrine is founded on the premise that the lessee has an opportunity to inspect the premises prior to occupancy and, being a conveyance of realty, the lease is subject to the same general rule as is applied to the sale of a freehold interest. This means that such a conveyance does not carry with it an implied warranty of fitness or habitability,¹³ and despite the fact that the premises may be unfit and/or uninhabitable, there remains the obligation to pay rent. Nor does the failure to pay rent terminate the tenancy unless so specified by the lease.¹⁴ The tenant takes the premises and appurtenances thereto as they exist, and assumes whatever risk there may be in occupying them. Even if the landlord should voluntarily make repairs, he is not bound to continue such practices.¹⁵

Caveat emptor assumes no fraudulent concealment of defects on the part of the landlord. This doctrine will not apply in an instance where defects are not discoverable by a reasonable inspection and which are already known to the landlord.¹⁶ A second exception occurs when the subject of a lease is a furnished dwelling. A few courts have reasoned

9. See *Ammons v. Beaudry*, 337 S.W.2d 323 (Tex. Civ. App. 1960).

10. *Galante v. Hathaway Bakeries, Inc.*, 6 App. Div. 2d 142, 176 N.Y.S.2d 87 (1958).

11. *Joiner v. Brightwell*, 252 Ala. 112, 39 So. 2d 414 (1949).

12. *Caveat emptor*—Let the buyer beware.

13. *Byrnheim-Linden Realty Corp. v. Great E. Contracting Co.*, 41 Misc. 2d 361, 245 N.Y.S.2d 490 (Dist. Ct. 1963); *Heissenbittel v. Comnas*, 14 Misc. 2d 509, 177 N.Y.S.2d 850 (Westchester County Ct. 1958); 1 H. TIFFANY, *supra* note 5.

14. *Sitzes v. Raidt*, 335 S.W.2d 690 (Mo. 1960); *Heissenbittel v. Comnas*, 14 Misc. 2d 509, 177 N.Y.S.2d 850 (Westchester County Ct. 1958).

15. *Bowles v. Mahoney*, 202 F.2d 320 (D.C. Cir. 1952), *cert. denied*, 344 U.S. 935 (1953).

16. *Carusi v. Schulmerick*, 98 F.2d 605 (D.C. Cir.), *cert. denied*, 305 U.S. 645 (1938); *see Slabe v. Beyer*, 149 A.2d 788 (D.C. Mun. Ct. App. 1959); *cf. Lawler v. Capital City Life Ins. Co.*, 68 F.2d 438 (D.C. Cir. 1933); Schoshinski, *Remedies of the Indigent Tenant: Proposal For Change*, 54 GEO. L.J. 519, 522 (1966).

Brown v. Southall Realty Co., 237 A.2d 834 (D.C. Mun. Ct. App. 1967), *cert. denied*, 89 S. Ct. 621 (1969), recently held that a District of Columbia landlord who leased a basement apartment knowing that it did not comply with housing regulations is not entitled to collect unpaid rent from the tenant since the lease agreement constituted an illegal contract.

that under the circumstances the lessee does not have adequate opportunity to inspect the premises prior to accepting the lease. *Pines v. Perssion*¹⁷ found an implied warranty of habitability and dependency of covenants in reaching its decision on the "furnished house" exception to *caveat emptor*.

Absent statutory authority, there is no case at common law allowing a tenant to withhold rent, and under the principles discussed above, it must be concluded that such an act is a breach of the lease and would not provide a defense to eviction by a landlord. This is clearly stated in *Portnoy v. Hill*,¹⁸ where defendant-tenants were conducting a rent strike claiming the landlord had violated the housing code. When confronted with a summary proceeding for eviction, defendants claimed the right to make the affirmative defense of "illegality of lease." The court held that the rent must be paid except for the period of time when rent could have been withheld by the Social Services Department under the pertinent rent withholding statute of that jurisdiction. The court continued,

the defendants openly admit participating in a "rent strike." When the petition for summary proceeding was commenced they had not paid rent for some period of time. In other words, while the proceedings have been taking place the tenants have been paying no rent at all and in effect what they are saying is—"We want the law enforced against the landlord, but not against us."¹⁹

It may therefore be concluded that the common law does not sanction rent withholding absent an applicable statute.

STATUTORY WITHHOLDING

At least nine states have enacted statutes providing for the withholding of rent under prescribed circumstances. These statutes fall into four categories: (1) withholding by a public agency, (2) repair and deduct action by the tenant, (3) receiverships, and (4) holding in escrow.

17. 14 Wis. 2d 590, 111 N.W.2d 409 (1961). The court held that where a furnished house is rented, there is an implied warranty of habitability, and the covenants to pay rent and to provide a habitable premise are dependent. This represents a minority view, and it is difficult to see why a furnished house should meet a different standard than an unfurnished dwelling.

18. 57 Misc. 2d 1097, 294 N.Y.S.2d 278 (Binghamton City Ct. 1968).

19. *Id.* at —, 294 N.Y.S.2d at 281.

Withholding by a Public Agency

New York has been a leader in the field of withholding legislation and has enacted several statutes applicable to this facet of the law. The Speigel Law²⁰ provides a means of withholding rent in circumstances where a recipient of public assistance is eligible for or entitled to receive his aid in the form of a payment for or toward the rental of housing for himself or his family. The payment is made directly to the landlord by the welfare department. Prior to withholding rent payments, the welfare agency must have received a report of each violation, submitted by an appropriate department or agency having jurisdiction over or authority to investigate such violations. Subsection 5(a) of this law states,

It shall be a valid defense in any action or summary proceeding against a welfare recipient for non-payment of rent to show existing violations in the building wherein such welfare recipient resides which relate to conditions which are dangerous, hazardous or detrimental to life or health as the basis for non-payment.²¹

The statute continues by providing that in any action or proceeding, the landlord shall not be entitled to an order or judgment awarding him possession of the premises or money damages against the tenant on the basis of non-payment of rent for any period during which there was existing any violation dangerous to life or health. It is important to note, however, that in circumstances where the owner leased the premises free from any violations of the housing code, and violations occurred as a result of the tenant's misuse of the premises, the Speigel statute does not deprive the owner of his right to collect rents or the right to summarily dispossess for non-payment of rent.

The Illinois statute²² allowing rent withholding by a welfare agency is very similar to New York's Speigel Law. Illinois additionally provides, however, for a penal sanction in cases where a landlord has terminated utility service to any building which houses public aid recipients whose rent has been withheld under the statute.

Repair and Deduct

The type of withholding statute most widely enacted is one which allows the tenant himself to make repairs which the landlord has re-

20. N.Y. SOC. WELFARE LAW § 143-b (McKinney 1966).

21. *Id.* § 143-b 5(a).

22. ILL. ANN. STAT. ch. 23, §§ 11-23, 11-23.1 (Smith-Hurd 1968).

fused or failed to make, and to deduct the cost of the repairs from his rent payment. Five states (California,²³ South Dakota,²⁴ North Dakota,²⁵ Montana,²⁶ and Oklahoma²⁷) have statutory provisions for withholding rent via this legislative means.

Each of these five states requires that a lessor of a building intended for human occupancy must, absent any agreement to the contrary, provide the building to the lessee in a condition fit for human habitation. If a condition which should have been corrected has not been corrected by the landlord within a reasonable time after notice, the lessee may then make the necessary repairs himself and deduct such costs from the rent payment. California and Montana have provisions requiring that expenses incurred by the tenant in making repairs may not exceed one month's rent of the premises. South Dakota, North Dakota, and Oklahoma place no limit on the amount that may be spent for repairs and later be deducted by the tenant.

Alternatively, the lessee may vacate the premises on the grounds that the landlord has neglected to repair unsatisfactory conditions. The lessee is then discharged from the provisions of the lease or further payment of rent.

Receivership

Both Massachusetts²⁸ and New York²⁹ statutorily provide for rent withholding under a court sponsored receivership arrangement. Massachusetts, by written order of the court, may authorize a tenant to make rental payments then due or that become due, to the clerk of the court of the applicable jurisdiction. It is necessary that the court find that the claimed violations endanger or impair the health and

23. CAL. CIVIL CODE §§ 1941, 1942 (West 1957).

24. S.D. COMP. LAWS §§ 43-32-8, -9 (1967).

25. N.D. CENT. CODE §§ 47-16-12, -13 (1960).

26. MONT. REV. CODES ANN. §§ 42-201, -202 (1961).

27. OKLA. STAT. ANN. tit. 41, §§ 31-32 (1951).

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

29. N.Y. REAL PROPERTY ACTIONS AND PROCEEDINGS AT LAW § 755 (McKinney 1963). This 1939 law was the first statute passed which legalized rent strikes. A § 755 proceeding is initiated by the withholding of rent by tenants of a building against which violations have been recorded by a code enforcement agency, which violations are deemed tantamount to constructive eviction. The tenant may defend an action for rent by obtaining a court order declaring that the code violations are substantial enough to constitute a constructive eviction. This order stays the eviction proceeding. During the stay, the rent is paid into court and when the violations have been corrected, the withheld rent is paid to the landlord. This law has been sustained in *Emray Realty Corp. v. DeStefano*, 5 Misc. 2d 352, 160 N.Y.S.2d 433 (Sup. Ct. 1957).

well-being of the tenant, and that such rental payments are necessary to remedy the condition constituting the violation. The tenant may not be in arrears in his rent; if in arrears, he must be willing to pay any accrued rent into court. The court then maintains discretion as to disbursement of the funds for property maintenance. The New York law is very similar.

Both jurisdictions provide for a stay of any tenant dispossession proceedings during the period that rent is withheld and paid into court. Massachusetts prevents a landlord from evicting a tenant for a nine month period following the date the court order ceases, provided the termination of the tenancy results through no fault of the tenant.³⁰

Escrow Holding

Pennsylvania has recently enacted legislation which provides a broad means for a tenant to withhold rent.³¹ If the proper governmental authority certifies that a particular dwelling is unfit, the duty of the tenant to pay and the right of the landlord to collect are suspended. Other terms of the landlord-tenant relationship are not affected. If the tenant continues to occupy the premises during this period of suspension, the rent withheld by the tenant is paid into an escrow account of an approved bank or trust company. The money is paid to the landlord only upon completion of repairs which make the premises habitable. If, six months from certification of the dwelling as unfit, the premises remain unfit for habitation, the funds deposited in the escrow account are payable to the depositor.³² Under such a statute a tenant may not be evicted for any reason while rent is deposited in escrow.

COMMON LAW V. STATUTE

Is a rent strike legal or illegal? Are there ever circumstances under which a tenant is legally justified in withholding rent? Can a rent strike ever be interposed as a defense in a legal proceeding? These questions can be answered affirmatively or negatively, depending upon

30. MASS. GEN. LAWS ANN. ch. 111, § 127F (Supp. 1969). This clause prohibits retaliatory evictions by the landlord for the stated period, adding protection for the tenant.

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

32. *Id.* This provision probably goes farther than any other, for should the landlord not perform satisfactorily within the stated period of time, he relinquishes the rent monies completely.

whether they are approached from a strict common law perspective or from the perspective of a jurisdiction having an applicable rent withholding statute. The answer at common law as to the legality of a rent strike, its justification, or its use as a defense is unequivocally in favor of the landlord. On the other hand, given the proper circumstances and a jurisdiction providing for statutory rent withholding, a rent strike may very well be legal, justified, and available as a defense in legal proceedings.

Consider the situation, however, in which an *illegal* rent strike is conducted, for instance in a jurisdiction not providing for rent withholding or in a jurisdiction so providing, but where the withholding is contrary to statutory requirements. Is the fact that the landlord has the weight of existing law on his side an adequate remedy for him to rely on, or is the landlord still at the mercy of those withholding rent payments? The fact is that a rent strike, legal or illegal, can and does work. An organized effort by a sufficiently large group of tenants can furnish the coercive power needed to force the landlord into submission to group demands, whether they are legal or illegal, justified or unjustified. Most landlords have operating costs to meet, and mortgages awaiting payment. A delay in receipt of funds for any appreciable length of time could result in foreclosure and financial disaster. "The prohibitive cost and delay of forcible eviction of all tenants provide[s] the bargaining leverage necessary to negotiate agreements . . ." ³³ Even under the most unjustified circumstances, a rent strike can serve the purpose of gaining recognition and thereby place undue pressure upon the landlord.

LANDLORD'S REMEDIES

Historically, certain common law remedies were available to the landlord faced with a tenant who refused or was unable to pay rent.

Debt. The common law has always recognized the right of one leasing for a period of years to sue for non-payment of rent. This right is unquestioned, and is equally available for a tenancy at will.³⁴

Covenant. In jurisdictions still allowing this form of action, pro-

33. Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1340 (1964). The author asserts the fact that the potential of such a strike is borne out in their personal experience as attorneys for a group of tenants resisting a raise in rent.

34. 3 H. TIFFANY, REAL PROPERTY § 911 (1939).

vided the lease is under seal, the common law action of covenant will lie.³⁵

Assumpsit. A landlord may bring an action of special assumpsit for rent in arrears, providing the promise is not under seal.³⁶

Use and Occupation. This remedy is not based on the owing of rent, but rather on an implied obligation of the tenant to make payment of a reasonable sum for use and occupation of the premises. The law recognizes the reasonableness of such an implication and will enforce the contract as one implied in fact. It is normally required that a relationship of landlord and tenant exist between the parties.³⁷

Forfeiture of Leasehold. The landlord may, either by terms of the lease or by statute, re-enter the premises for failure to pay rent, and thereby terminate the tenant's estate. Often, summary proceedings are available in such circumstances.³⁸

Distress for Rent. In its early development this remedy enabled the landlord to seize the chattels of the tenant and hold them as security or sell them and retain the amount due. This remedy has been shown little favor in this country because of its oppressive nature. Some states have seen fit to modify it, while others have abolished it completely.³⁹

Eviction. Where there exists a tenancy at will, the landlord need only give the required notice to vacate. No reason for termination is required. In a tenancy involving a period of time the landlord can give notice and terminate at the end of the tenancy. This remedy, however, does not provide for payment of rent which is due. If the landlord chooses to evict, he must bring individual actions against each tenant withholding rent. It is readily apparent that where an appreciable number of tenants are involved, maintenance of separate actions may be unwise because not only are litigation costs involved but also rentals would not be forthcoming for the period of the suit.⁴⁰

35. *Id.* § 912.

36. *Id.* § 913.

37. *Id.* § 914.

38. *Id.* § 915.

39. *Id.* § 918.

40. *See Knowles v. Robinson*, 60 Cal. 2d 620, 387 P.2d 833, 36 Cal. Rptr. 33 (1963). The final decision in favor of the landlord in a summary action was delayed by the defendant for two years after the termination of the lease. The rent strike derives its success from its nuisance value which places pressure upon the landlord. *See also* Comment, *Rent Withholding and the Improvement of Substantial Housing*, 53 CALIF. L. REV. 304, 332 (1965).

It would appear that the landlord has at least six avenues to follow in seeking relief for an illegal withholding of rent. When assessed from the standpoint of adequacy, however, not a single remedy provides effective relief for situations involving strikes. *Each remedy requires that the landlord individually confront an organized group of tenants through time-consuming institution of separate actions.* Even if the landlord is successful in each action, he has been deprived of his resources for such a period of time that it might prove to be financially fatal.⁴¹

THE INJUNCTION

It is axiomatic that a court of equity may accept jurisdiction where adequate redress cannot be obtained at law. The general rule is that to deny injunctive relief, the remedy at law must be plain, adequate, and complete.⁴² The law remedies heretofore discussed may be plain, but they certainly are not adequate or complete. The legal remedy should be as practicable and efficient as the equitable remedy.⁴³ Courts favor relief which prevents a wrong over that which will afford redress.⁴⁴

In an action related to recovery of real property, an injunction will not issue if there is an adequate remedy at law, but where the law remedy is not as full, adequate, or complete as the one equity is empowered to provide, and equitable intervention is justified, an injunction may issue.⁴⁵

It is to be carefully noted that a mere existence of a remedy at law does not defeat equitable jurisdiction. The legal remedy must be as practical and efficient as the equitable remedy in rendering justice and as prompt in its administration.⁴⁶ On the other hand, equity will not

41. Comment *supra* note 40.

42. *Commercial State Bank v. Gidney*, 174 F. Supp. 770 (D.D.C. 1959), *aff'd* 278 F.2d 871 (D.C. Cir. 1960); *Republic Aviation Corp. v. Republic Lodge 1987 Intern. Ass'n of Mach.*, 10 Misc. 2d 783, 169 N.Y.S.2d 651 (Sup. Ct. 1957).

43. *Republic Aviation Corp. v. Republic Lodge 1987, Intern. Ass'n of Mach.*, 10 Misc. 2d 783, 169 N.Y.S.2d 651 (Sup. Ct. 1957).

44. *Id.*

45. *Sambatara v. Caffo*, 20 F.2d 276 (D.C. Cir. 1927); *Bartelstein v. Goodman*, 340 Ill. App. 51, 90 N.E.2d 796 (1950).

46. *Harris Stanley Coal & Land Co. v. Chesapeake & O. Ry.*, 154 F.2d 450 (6th Cir.), *cert. denied*, 329 U.S. 761 (1946); *Local 499, Intern. Broth. of Elec. Workers v. Iowa Power & Light Co.*, 224 F. Supp. 731 (S.D. Iowa 1964); *Republic Aviation Corp. v. Republic Lodge 1987, Intern. Ass'n of Mach.*, 10 Misc. 2d 783, 169 N.Y.S. 651 (Sup. Ct. 1957); *Durham v. Public Service Co.*, 257 N.C. 546, 126 S.E.2d 315 (1962).

interfere to prevent multiplicity of suits where it is possible to avoid such multiplicity *by a consolidation of the actions at law*, since the legal remedy would then be just as adequate. If consolidation is not possible, injunctive relief should be available.⁴⁷ As noted above, all the law actions maintained by the landlord require him to institute separate actions.

Equity will intervene, however, in a situation where it offers a clearer and more adequate remedy for the wrong complained of than the action at law.⁴⁸ It has been held that the existence of an adequate remedy at law is immaterial, for the purpose of the injunction is to dispense with the cumbersome and time consuming procedures which are inherent in a multiplicity of suits.⁴⁹

It is normally a prerequisite that the person seeking an injunction show that he has an established right at law. However, where that right involves an action brought by one against many, and the various defendants seek to litigate the same legal right, an injunction will lie. In fact, if there are numerous actions pending at law relating to the same subject, an equity court may determine the rights of all parties in one proceeding and enjoin the pending law actions in an effort to prevent a multiplicity of suits or circuitry of action.⁵⁰

Unquestionably, the power of equity should be used sparingly, and used only when law remedies are inadequate and the equities invoking it are strong and apparent. When multiplicity of suits can be prevented, however, an injunction is not only permitted, but is favored by the courts.

Case law on the rent strike is limited; however, *Dorfmann v. Boozer*,⁵¹ a District of Columbia case, presents a fact situation likely to be seen again. Defendants in that action were tenants of an apartment complex and members of the Trenton Terrace Tenants Council, an organization formed by the tenants to "negotiate" with the landlord about matters affecting all the tenants in order to protect their rights. Alleging housing code violations, the Council withheld rent payments for more than a year and paid the monies into an es-

47. *Repka v. American Nat. Ins. Co.*, 143 Tex. 542, 186 S.W.2d 977 (1945).

48. *Crown Zellerbach Corp. v. Wirtz*, 281 F. Supp. 337 (D.D.C. 1968); *DeGeeter v. Bennett*, 133 N.J. Eq. 349, 32 A.2d 335 (Ct. Err. & App. 1943), *cert. denied*, 320 U.S. 759 (1943). *East Newark Realty Corp. v. Dolan*, 15 N.J. Super. 288, 83 A.2d 346 (Super. Ct. 1951).

49. *Repka v. American Nat. Ins. Co.*, 143 Tex. 542, 186 S.W.2d 977 (1945).

50. *Bartholomew v. Bartholomew*, 56 Cal. App. 2d 216, 132 P.2d 297 (1943); *Grand Rapids v. Central Land Co.*, 294 Mich. 103, 292 N.W. 579 (1940).

51. 414 F.2d 1168 (D.C. Cir. 1969).

crow account. Plaintiff landlord, faced with the multiplicity of actions in suing each tenant and with foreclosure rapidly approaching, sought relief through equity in the district court.⁵² Plaintiff prayed for an accounting of the escrow funds and preliminary and permanent injunctions enjoining the tenants from placing any more rent payments into the fund and asking that funds already in the account be ordered released for purposes of operating the apartment complex.

After the hearing, and with consideration to the pleadings, testimony, and affidavits, the district court granted a preliminary injunction.⁵³

He found that appellees were "without operating funds, and without any source of income other than [their] rental income," and that if they were unable to obtain operating funds "immediately" they would have to cease their operations and would suffer a foreclosure. He concluded that appellees would thus suffer irreparable injury if they did not get operating funds at once, and that therefore the remedy of a suit at law was inadequate.⁵⁴

The injunction issued and the defendants appealed.

The Court of Appeals for the District of Columbia⁵⁵ reversed the district court's decision basing its reversal on grounds that the landlord had available a "full panoply" of legal remedies to rely upon, and that the escrow funds did not constitute "constructive payments" of rent. The court stated that there had been no relinquishing of control over the money. The court chose not to elaborate on the adequate remedies it envisioned, nor did it feel obliged to discuss the fact that for a period of time during withholding, the escrow arrangement was such that the rent of a tenant could be disbursed only upon a vote of the Tenant Council, with the consent of the individual tenant and the written signature of the attorney for the Tenants Council. That arrangement has the appearance of a *prima facie* showing that the escrow account was intended for rent payment—if and when the tenants collectively decided to release the funds.

The Court of Appeals for the District of Columbia⁵⁶ enhanced the effectiveness of collective coercion by refusing the landlord a remedy

52. The litigation is pending in the District Court. In addition to this suit, the landlord has filed eviction suits in the District of Columbia Court of General Sessions against nine of the tenants; the suits are pending in various stages of litigation.

53. *Id.*

54. *Dorfmann v. Boozer*, 414 F.2d 1168, 1170 (D.C. Cir. 1969).

55. *Id.*

56. *Id.*

which could have coped with the forceful effect of a rent strike. To prevent similar situations from arising, a definitive statement of rights and remedies for both landlord and tenant is in order.

A PROPOSAL

Since the legal remedies available to the landlord carry with them the requirement of separate actions, the landlord is forced to look elsewhere for relief. It would appear that the equitable remedy of injunction would be helpful but as previously shown, redress through the injunction has clearly been ineffective.⁵⁷ This leaves the landlord only one alternative, and that is legislation which will clearly define the legal responsibilities of both parties, as well as provide effective methods of enforcement.

As stated earlier, mistrust and friction have often surrounded the landlord-tenant relationship. Furthermore, where there has been an alleged breach of duty, the remedies were unclear. Such a situation has led to inconsistent treatment of both parties by the judiciary, which is often forced to *legislate* on a case-by-case basis. It is evident that legislative guidelines are needed. Such guidelines should be for the benefit of both parties, and should provide each side with an adequate remedy of enforcement should the equities be in his favor. This will require definiteness and clarity as to what constitutes sufficient reason for complaint and thus for rent withholding by a tenant. By providing the tenant with a clear statement as to what his rights are, not only is the tenant benefitted, but the landlord also. Thus the tenant knows what he can rightfully expect from the landlord, and the landlord knows what he must do to guarantee the receipt of rent payments.

The Illinois rent withholding statute⁵⁸ provides a good example of what is considered as a violation warranting withholding of rent. It states that should the proper governmental unit have reason to believe that a building containing housing accommodations and occupied by a tenant violates any law or ordinance concerning construction, plumbing, heating, electrical equipment, fire prevention or other health and safety standards and is in a condition that is dangerous, hazardous or detrimental to life or health, then that governmental unit should report the violation to the proper authority, which is then bound to promptly investigate and report its findings. If the report establishes violations, the owner, lessor, or authorized agent is notified that he has ten days

57. *Id.*

58. ILL. ANN. STAT. ch. 23, §§ 11-23 (Smith-Hurd 1968).

within which to correct the violations. If he does not comply, rent withholding is authorized. Only upon proof of correction of the violations may the landlord collect the rent so withheld. Further protection for the tenant is provided in that if an action of ejectment, distress for rent or any other cause is brought against the tenant, he has a valid defense by merely showing the existing violations.⁵⁹

Pennsylvania adds even more protection for the tenant by providing that if six months after the certification of a dwelling as unfit for habitation, such dwelling has not been certified as fit for habitation, any rent money properly withheld becomes the property of the tenant.⁶⁰ This provision might properly be termed a penalty clause for refusal to comply with the statute. This means the tenant not only has the power to withhold under proper circumstances, but may also collect punitive damages for noncompliance, this should certainly ensure that the landlord carries out his legal responsibilities.

With the tenant knowing what he can expect, the landlord should be afforded no less. The landlord can look to such a statute as proposed and know that if he is not in violation of any enumerated provisions, rent should be forthcoming. This means that he will not be subject to collective coercion through rent withholding for the purpose of gaining benefits or improvements by tenants where there has been no violation of the statute. This is necessary since the landlord presently has no remedy at law or in equity to stop this coercion. The landlord's position would be greatly enhanced if a penalty clause such as that provided by Pennsylvania were enacted for his benefit. This would alleviate groundless claims and attempts to circumvent the statute.⁶¹ As it stands now, the landlord is often faced with a rent strike for which he has no remedy. He can either agree to the terms presented, or he can refuse them, but he is limited in bargaining for different terms because he has been stripped of his bargaining power. This power should be provided for and protected in order to prevent such situations from arising. Above all, such legislation should both define the legal responsibilities of the parties and provide a means for their enforcement.

G. RICHARD GOLD

59. *Id.*

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

61. *Id.*