

Tenants' Repair Remedies

Introduction

This publication is designed to provide information on tenants' repair remedies in the State of Washington. Various federal, state and local laws apply to the relationship between landlords and tenants. This publication discusses the tenant repair remedies provided in the Residential Landlord-Tenant Act ("the Act"), found at [RCW 59.18](#), explains the Warranty of Habitability and advises how to get unsafe or uninhabitable premises inspected. Many other publications on different aspects of landlord-tenant law are available by calling Northwest Justice Project's CLEAR line at 1-888- 201-1014, or by visiting www.washingtonlawhelp.org. These include: [Eviction and Your Defense](#); [Landlord/Tenant Law](#); [Recovering Your Security Deposit](#); [Section 8 Existing Housing Evictions](#); [Public Housing Evictions](#); [HUD Housing Evictions](#); and [Tenants' Rights Under the Mobile Home Landlord Tenant Act](#).

Important

- Before attempting to exercise any of the remedies described in this publication, the tenant should read this publication carefully.
- To use the repair remedies provided in the Act, the tenant must be current in rent and any utilities the tenant is obligated to pay.
- Both the tenant and the landlord must perform duties and exercise remedies under the Act in good faith.
- Under the Act, tenants are not entitled to withhold rent even if the landlord has not made repairs. (See Remedies Under the Act discussed below; See also Warranty of Habitability discussed below.)
- Tenants who receive an unlawful detainer (eviction) notice should consult an attorney and read our publications [Landlord/Tenant Law](#) and [Eviction and Your Defense](#). When an attorney is consulted, it is very important to have all written materials relating to the tenancy available, including the lease or rental agreement, rent receipts, and any written notices given to or received from the landlord. (Keep copies of all documents.) Low income tenants may phone the CLEAR intake line at 1-888-201-1014 to request assistance.

Landlord's Repair and Maintenance Duties

The landlord's duties under the Act related to repair and maintenance of the premises are summarized below, and a copy of [RCW 59.18.060](#) accompanies this publication. (Attachment 1.) Other landlord duties, including the duty not to discriminate and the duty not to conduct unlawful lockouts, utility shutoffs, or property seizures, are discussed in our [Landlord/Tenant Law](#) and [Eviction and Your Defense](#) publications. The tenant's duties under the Act are discussed in our [Tenants' Rights](#) publication, and a copy of [RCW 59.18.130](#) accompanies this publication. (Attachment 2.)

The Landlord Must:

1. Keep the premises fit for human habitation at all times during the tenancy.
2. Maintain the premises to comply substantially with all state and local laws that substantially affect the tenant's health and safety.
3. Maintain all structural components (chimney, roof, floors, etc.) in reasonably good repair.
4. Keep any shared or common areas reasonably clean and safe.
5. Provide a reasonable program for the control of insects, rodents and other pests, except when infestation is caused by tenant. (In the case of a single-family residence, the landlord does not have to control infestation that occurs after the beginning of tenancy.)
6. Make repairs and arrangements necessary to put and keep the premises in as good condition as by law or rental agreement it should have been at the beginning of the tenancy, except where the condition is due to normal wear and tear.
7. Provide reasonably adequate locks and give keys to the tenant.
8. Maintain all electrical, plumbing, heating and other facilities and appliances supplied by the landlord.
9. Maintain the dwelling in a reasonably weather-tight condition.
10. Provide garbage cans, and arrange for regular removal of waste except in the case of a single-family residence.
11. Provide facilities adequate to supply heat, hot water and water as reasonably required by the tenant.
12. Provide the tenant with written notice that the rental unit is equipped with smoke detectors and that it is the tenant's duty to maintain them.

The Landlord Must Not:

1. Enter into a rental agreement for premises that have been condemned or declared unlawful to occupy by a government agency responsible for code enforcement.
2. Intentionally shut off any of the tenant's utility services including water, heat, electricity or gas, except for a temporary interruption for necessary repairs. (See our [Eviction and Your Defense](#) publication.)
3. Retaliate against the tenant for: (a) good faith complaints concerning health and safety issues to government authorities or (b) good faith attempts to enforce his or her rights under the Act. (See Retaliation discussed below.)

The Landlord's Potential Liability

- The landlord may be liable for damages and penalties for intentionally renting property that has been condemned or declared unlawful to occupy.
- The landlord is not liable for defective conditions caused by the tenant, or by the tenant's family or guests.
- The landlord is not liable for defective conditions caused by the tenant's unreasonable refusal

to allow the landlord to enter the residence to make repairs.

What to do when repairs are needed

Written Notice Required

- The first step to getting the landlord to make repairs is to give the landlord a **written notice** of what needs to be fixed. A written notice is required even if the landlord knows about the needed repairs and even if the tenant has told the landlord verbally. A sample notice requesting repairs is included with this publication. ([Attachment 3.](#))
- The notice should include the name of the tenant, the date, the name of the owner, the address of the premises, and a description of what needs to be repaired. The notice may also include a copy of the landlord's duties under the Act. ([Attachment 1.](#))
- In preparing a notice of needed repairs, it may be helpful to go through the entire rental premises, listing needed repairs room by room and adding any repairs needed to the exterior or common areas.
- “Delivery” of a notice requesting repairs is all that the Act requires. In order to prove “delivery” it is advisable that the tenant either (1) send the notice by certified mail and by regular U.S. mail or (2) personally give it to the landlord or to the person who collects the rent. (A neutral witness to the method of delivery can be helpful in proving delivery of the notice.)
- If the owner is different from the manager, sending copies of the notice to both may be helpful but is not required.
- Tenants should keep, for their records, photocopies of all notices delivered to the landlord, preferably in a file along with the lease, any rent receipts and any written notices or letters received from the landlord.

Time Period for Landlord to Begin Repairs after Written Notice

- The landlord must start making repairs as soon as possible after receiving a written notice and no later than the following time limits:
 1. 24 hours to begin to restore heat, hot or cold water, electricity, or to fix a very hazardous condition.
 2. 72 hours to begin to fix a refrigerator, range and oven, or major plumbing fixture supplied by the landlord.
 3. 10 days to begin making repairs in all other cases.
- If the landlord cannot meet these timelines because of circumstances beyond his or her control, the repairs must still be completed as soon as possible.

Reporting to Government Agencies

Tenants may notify local health or building departments of possible health or building code violations. (See Building Code Enforcement/Government Inspection and Rent Escrow below.) So long as the tenant is in compliance with the act, the landlord must not retaliate against the

tenant for good faith complaints to government authorities. (See Retaliation below and our Tenants' Rights publication.) If the landlord fails to remedy a defective condition after receiving written notice of the problem, a report to a local code inspector with a request for an inspection may provide the motivation the landlord needs to correct the problem. A report will also help to document the existence of the condition and the landlord's knowledge of it. In the event of an injury caused by a hazardous condition on the premises, or of retaliatory action by the landlord against the tenant, such proof is usually vitally important. If the inspector finds a violation of the building codes, the inspector will usually send the landlord a letter explaining the obligation to comply with all applicable codes. Sometimes fines or other penalties may be imposed on the landlord. If a dwelling is in sufficiently poor condition, it is possible that the city will condemn some or all of the building and may require tenants to move out often on very short notice.

Choice of Remedies if the Landlord Doesn't Make Repairs

If the landlord fails to remedy a defective condition within a reasonable time after receiving written notice from the tenant, and after the applicable 24 hour, 3 day or 10 day period to begin repairs has expired, the tenant has the following options:

1. Move out:

The tenant may terminate the rental agreement by giving written notice to the landlord and moving out immediately without further obligation under the rental agreement. The tenant will be entitled to a refund of any prepaid rent. The tenant will also be entitled to a refund of the security deposit in accordance with the usual security deposit rules. (See our Landlord/Tenant Law and Recovering Your Security Deposit publications.)

2. File a lawsuit:

The tenant may sue the landlord in state court for any remedy provided by the Act or otherwise provided by law.

3. Arbitration or mediation:

The tenant may, if the landlord agrees, try to settle the dispute through arbitration or mediation.

4. Pursue other remedies:

The tenant may pursue other remedies available under the Act. (See below.)

Remedies Under the Act

The following remedies may be used only if the tenant's rent and utilities are current and the landlord does not start repairs within the required time period after receiving written notice:

1. No Right to Withhold Rent

Under the Act, tenants are not entitled to withhold rent even if the landlord has not made repairs. A tenant who withholds rent loses the right to use the limited repair remedies provided by the Act, and gives the landlord the right to issue a three-day pay or vacate notice and to start an unlawful detainer (eviction) action in court. (See our Eviction and Your Defense publication.)

2. Repair and Deduct

If the landlord has not started the repair within the required time period following receipt of a proper written notice, or does not complete the repairs promptly (and if the tenant cannot or does not want to move out), the tenant may have the repair done and then deduct the actual costs (never more than 1 month's rent) from the next month's rent. In order to use the Repair and Deduct remedy:

- The tenant must be current in rent and any utilities the tenant is obligated to pay.
- The tenant must deliver a written notice to the landlord or to the person who collects the rent as described above. (See Attachment 3.)
- The tenant must wait until the applicable period, 24 hours, 3 days, or 10 days, has expired before proceeding with the repair and deduct remedy. (See Time Period for Landlord to Begin Making Repairs above.)
- The tenant must serve, by certified mail or in person, the tenant's own good faith written estimate of the cost of having the repair performed (in addition to the written notice) if:
 1. the repair must be performed by a licensed or registered repair person; or
 2. the cost of the repair will be more than one month's rent.
- The written estimate may be submitted at the same time as the written notice of a needed repair.
- If the specific needed repair requires the landlord to begin the repair within 10 days (See Time Periods above), the tenant may not enter into a contract for repairs for 5 days after delivering the written estimate. Therefore, it is a good idea to serve the written estimate at the same time as the written notice requesting repairs or as soon as possible afterwards. This 5 day period does not apply if the repairs must be made within 24 hours or within 3 days.
- The tenant may have the repair made if the landlord fails to start repairs within the required time periods after receipt of the written notice of the needed repair and written estimate.
- The tenant must make arrangements to pay the repair person.
- The tenant must give the landlord an opportunity to inspect the work. It is generally a good idea to provide the landlord with a written notice that the repairs have been completed and are available for inspection within a reasonable time.
- After the landlord has inspected the work or has been given a reasonable opportunity to inspect the work, the tenant may deduct the cost of repairs from the *next month's* rent.
- The deduction for each repair cannot exceed one month's rent and no more than two months' rent can be deducted in any 12-month period.

3. **Self-Help Repair and Deduct**

If the cost of the repair is not more than one-half month's rent and the repair does not require a licensed repair person, the tenant may make the repair himself or herself. In order to use Self-Help Repair and Deduct:

- The tenant must be current in rent and any utilities the tenant is obligated to pay.

- The tenant must deliver a written notice to the landlord or to the person who collects the rent as described above. (See Attachment 3.)
- The tenant must wait until the applicable period, 24 hours, 3 days, or 10 days, has expired before proceeding with the repair and deduct remedy. (See Time Period for Landlord to Begin Making Repairs above.)
- The tenant is not required to provide a separate written estimate of the cost of repairs for a self-help repair.
- The tenant must perform the repair in a workman-like manner.
- The tenant must give the landlord an opportunity to inspect the work. The tenant should provide the landlord with a written notice that the repairs have been completed and are ready for inspection. The written notice may suggest a date for an inspection.
- The tenant may also state in writing that if the landlord does not reply by that date or suggest an alternative date for the inspection, it will be assumed that the landlord approves of the work without inspection.
- After the landlord has inspected the work or has been given a reasonable opportunity to inspect the work, the tenant may deduct the cost of repairs from the *next month's* rent.
- The deduction for each self-help repair cannot exceed one-half month's rent and no more than one month's rent can be deducted in any 12-month period.

4. **Building Code Enforcement/Government Inspection**

- Any time the tenant is worried about the conditions of the dwelling unit, the tenant may notify the city or county office that enforces the housing and building code and request an inspection. If the city or county office agrees to an inspection, the inspector may conduct the entire inspection or do a preliminary inspection, then refer the rest to another agency, such as the health department.
- If the inspection finds problems or defects in violation of the building code, the city or county can require the landlord to make necessary repairs or vacate the building.
- Although many code violations do not require vacating the building, if the dwelling unit is in very bad condition, it is possible that the city or county will require the tenants to vacate the building on very short notice.
- The response of local government officials to a tenant's request for inspection or code enforcement varies dramatically depending on the particular city or county in which the tenant resides. This variety in local government response is caused by many factors including: available resources; government policy choices on how to spend limited resources; specific language of building codes (or whether the local government has adopted a building code); and whether the dwelling unit is in an urban or rural area.

5. **Rent Escrow**

- If repairs cannot be made using Repair and Deduct (for example, if the repairs would cost more than one month's rent), and if the conditions of the dwelling unit substantially endanger

or impair the tenant's health and safety, the tenant may deposit rent payments into an escrow account instead of giving it to the landlord. The section of the Act governing rent escrow accounts, RCW 59.18.115, is attached to this publication. (Attachment 4.)

- An escrow account is an account maintained by a person authorized by law to hold money until certain conditions are met, in this case, until the landlord corrects the defects.
- The rent escrow remedy is technical and complicated. To use the rent escrow remedy, the tenant must meet certain conditions and carefully follow the steps outlined below.
 1. The tenant must be current in rent and any utilities the tenant is obligated to pay.
 2. The landlord must have failed to start repairs within the required time period (See Time Periods above) after receipt of a written notice of a needed repair (See Written Notice Required above.)
 3. The tenant must determine in good faith that other repair remedies (such as repair and deduct) are inadequate to correct the problems.
 4. A local government representative must certify in writing that the defect exists and substantially endangers the tenant's health or safety.
 - a. The tenant may ask the city or county inspection office to do a "rent escrow inspection" and to certify the results in writing within 5 days. (See Rent Escrow Inspection Request form, Attachment 5.)
 - b. A copy of the notice requesting repairs that was given to the landlord should be attached.
 - c. As with requests for building code inspections, the response of local governments to requests for rent escrow inspections varies considerably. In some parts of the state it is not possible to obtain the necessary certification from the local government, and without a government certification, the rent escrow remedy cannot be used.
 5. The inspector must give the landlord 24 hours' notice before the inspection date and time. The landlord is entitled to be present, but cannot prohibit the inspector from entering the premises.
 6. The inspector must certify in writing that the conditions found can be a "substantial risk" to health and safety or make the premises "substantially unfit for human habitation." Such conditions may include, but aren't limited to:
 - a. Structural problems, such as the house falling down, walls sagging, exposure of the tenants to the weather because the roof leaks, or broken windows or doors.
 - b. Inadequate plumbing and sanitation that directly expose the tenants to risk of illness or injury.
 - c. Lack of water, or of hot water.
 - d. Heating or ventilation systems are not working or are hazardous.
 - e. Substantial problems with wiring and electrical service, defective or inadequate exits, and conditions that increase the risk of fire.

7. Notice of Escrow: The tenant must mail first-class or hand-deliver to the landlord a written notice of the rent escrow along with the written certification by the city or county, not later than 24 hours after the tenant first deposits rent in escrow. (See Notice of Rent Escrow, Attachment 6.)
8. It is advisable for the tenant to consult an attorney once the inspector has certified the dwelling unit as eligible for escrow before placing rent in an escrow account.
9. Either the tenant or the landlord may file a lawsuit to obtain the release of rent money deposited in escrow and the court or arbitrator may determine whether past, present, or future rent should be reduced because of any defects.
10. Because a rent escrow account can be difficult and sometimes expensive to set up, this remedy is often best used to motivate the landlord to make repairs without actually taking the final step of depositing your rent into the account.

Warranty of Habitability

- A warranty of habitability is implied by operation of law in all residential tenancies. The implied warranty of habitability trumps contrary language in any oral or written rental agreement. It cannot be waived or bargained away in exchange for lower rent.
- The implied warranty of habitability was independently created by the Washington Supreme Court in the case of *Foisy v. Wyman*, 83 Wn.2d 22, 515 P.2d 160 (1973). A copy of this case is attached to this publication (Attachment 7).
- A statutory warranty of habitability was also created when the Washington Legislature enacted the Residential Landlord Tenant Act, which requires landlords to “keep the premises fit for human habitation at all times during the tenancy” and to maintain the premises to comply substantially with all state and local laws that substantially affect the tenant’s health and safety. (See the Landlord’s Repair and Maintenance Duties above and Attachment 1).

Application to the landlord

- The warranty of habitability is, in effect, the landlord's guarantee that residential rental premises are safe enough to live in.
- No landlord can require any residential tenant to waive (give up) this warranty as a condition of tenancy.
- Any provision of a rental agreement that states that the premises are not governed the warranty of habitability or attempts to limit the landlord’s duties to maintain and repair the dwelling unit below that required by the Act and housing codes is unlawful and unenforceable.

Application to the tenant

- If the premises are partially or totally uninhabitable because the landlord failed to make needed repairs, the tenant may be able to claim a partial or total rent reduction for the period that the premises were uninhabitable.

- The repairs must be major, however, affecting the safety and livability of the residence. Minor housing code violations will not necessarily amount to a breach (violation) of the warranty of habitability if they do not affect the tenant's ability to live safely in the residence.
- Rent withholding is usually a very dangerous and unwise strategy, particularly for month-to-month tenants. For the reasons stated below, it is generally impossible to predict how much rent a tenant could safely withhold.

As a Defense to Eviction

- The Landlord's breach of the implied warranty of habitability may be a defense to an unlawful detainer action based on nonpayment of rent. This defense relies upon the Washington Supreme Court decision *Foisy v. Wyman*, 83 Wn.2d 22, 515 P.2d 160 (1973) (Attachment 7), and not on the Residential Landlord-Tenant Act.
- If a breach of the warranty of habitability defense is asserted in an unlawful detainer action based on alleged non-payment of rent, the court will look at two things.
 1. It will decide whether the unit was totally or partially uninhabitable (unlivable) during the tenancy.
 2. It will decide what the reduction in the rental value for the unit should be during the term of the tenancy.
- Courts find that making such decisions is extremely difficult unless expert testimony is presented. Making such a decision becomes even more difficult when it must be made at an unlawful detainer show cause hearing where the court can probably devote only a few minutes to the case.
- There is no agreed upon standard for calculating the appropriate reduction in rental value, and different judges may treat the same set of facts in different ways.
- If the amount of unpaid or withheld rent (the amount of rent due under the rental agreement minus the amount actually paid) is less than the amount of reductions allowed by the court, the court should dismiss the landlord's eviction action.
- If the court determines that some amount of rent is owed, even if it is as little as \$1.00, and was not tendered within three days of service of a three day pay or vacate notice, the court could order that a writ of restitution restoring the landlord to possession of the premises be issued and enter a judgment for the amount of rent determined to be owed, plus court costs, plus attorney fees. (See our Eviction and Your Defense publication.)

Example of What the Court Might Do

- Imagine that the rental agreement requires a rent payment of \$600 each month, and that the tenant has paid that \$600 for six months (\$3,600 altogether), but then missed one month's rent payment, causing the landlord to initiate an eviction action alleging nonpayment of rent.
- If the court decides that the apartment is only worth \$400 a month because of problems or defects affecting habitability, the tenant would owe a total of \$2,800 over the 7 month period (the six months the tenant paid and the one month the tenant did not). Since the tenant has

already paid \$3,600, the tenant does not owe rent, and the court should not evict. In addition, the landlord would have to decrease the rent to \$400 a month until the apartment is fixed.

- If the court found that the apartment was worth more than the tenant actually paid (\$3,600 total payments divided by 7 months equals \$514 a month), the court would probably rule in favor of the landlord, order that the tenant be evicted, and give the landlord a judgment for the unpaid rent, court costs and attorney's fees. (See our [Eviction and Your Defense](#) publication.)

Evidence That Will Support the Tenant's Claim

- Although a warranty of habitability claim does not depend on an official inspection or official finding of violations of housing codes, a very useful and inexpensive way to prove a claim of the landlord's breach (violation) of the warranty of habitability is to obtain reports and testimony from housing code inspectors. (See Building Code Inspection/Government Inspection above.)
- Photographs are also very helpful.
- It is best to have a witness testify regarding rental values in the community, and what the rental unit was actually worth considering the defects.
- Because the major difficulty in using the breach of warranty of habitability claim is estimating the proper rental value, the judge may appreciate any help that can be offered in the way of testimony from a person experienced in property valuation. Potential witnesses likely to have such expertise include building inspectors, some housing authority employees, or real estate agents.
- It is important to know what a witness will say before having him or her say it in court or in a statement submitted to the court.

Suing the Landlord for a Rent Reduction

- It is possible to use a breach of the warranty of habitability claim to start a lawsuit against the landlord and seek a court-ordered rent reduction, even when the landlord has not started an eviction action. However, because of the problems courts have in determining the seriousness of the defects and the proper amount of the rent reduction, this may be difficult.
- If the tenant believes the needed repairs are bad enough to justify a rent reduction, the tenant can start an action in Small Claims Court to attempt to force the landlord to return rent that has already been paid (See the "Small Claims Court" publication available from CLEAR), or the tenant can start an action in Superior Court for past and future reduction of rent.
- Although tenants have the right to present a breach of the warranty of habitability claim as a defense to an eviction for nonpayment of rent, it can be risky. It is generally not a good idea for tenants to withhold part or all of the rent on the assumption that a court will agree with the tenant on how much the apartment was actually worth. If the tenant guesses wrong and the court thinks too much was withheld, the Tenant may be evicted without the chance to make up the difference.

Retaliation

- The landlord is prohibited from retaliating or threatening to retaliate against (getting even with) the tenant for good faith complaints to government agencies about conditions that endanger the tenant's health or safety, or for exercising any of his or her rights under the Act. Sending a written notice requesting repairs is an exercise of the tenant's rights under the Act.
- Retaliatory actions can include:
 1. Threatening or commencing an eviction
 2. Increasing rent
 3. Reducing services
 4. Increasing the tenant's obligations
- If the landlord attempts any of these actions within ninety (90) days of the tenant's complaint to a government agency or exercise of his or her rights under the Act, the action is presumed to be retaliatory. This presumption may be rebutted (proved wrong) by the landlord.
- A notice issued by the landlord is presumed not to be retaliatory if the tenant is behind in rent or not in compliance with the rental agreement. This presumption may be rebutted (proved wrong) by the tenant.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, January 2003.

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Attachment 1

RCW 59.18.060. Landlord—Duties

The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

- (1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation which the legislative body enacting the applicable code, statute, ordinance, or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;
- (2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;
- (3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;
- (4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;
- (5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;
- (6) Provide reasonably adequate locks and furnish keys to the tenant;
- (7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by the landlord in reasonably good working order;
- (8) Maintain the dwelling unit in reasonably weathertight condition;
- (9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;
- (10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;
- (11) Provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 48.48.140. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of RCW 48.48.140(3). The notice must be signed by the tenant and the landlord or the landlord's authorized agent with copies provided to both parties.
- (12) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified of any changes immediately by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section.

Attachment 2
RCW 59.18.130. DUTIES OF TENANT

Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

- (1) Keep that part of the premises which s/he occupies and uses as clean and sanitary as the conditions of the premises permit;
- (2) Properly dispose from his or her dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;
- (3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;
- (4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his or her family, invitee, licensee, or any person acting under his or her control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;
- (5) Not permit a nuisance or common waste;
- (6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;
- (7) Maintain the smoke detection device in accordance with the manufacturer's recommendations, including the replacement of batteries where required for the proper operation of the smoke detection device, as required in RCW 48.48.140(3);
- (8) Not engage in any activity at the rental premises that is:
 - (a) Imminently hazardous to the physical safety of other persons on the premises; and
 - (b)
 - (i) Entails physical assaults upon another person which result in an arrest; or
 - (ii) Entails the unlawful use of a firearm or other deadly weapon as defined in RCW 9A.04.110 which results in an arrest, including threatening another tenant or the landlord with a firearm or other deadly weapon under RCW 59.18.352. Nothing in this subsection (8) shall authorize the termination of tenancy and eviction of the victim of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon;
- (9) Not Engage in any gang-related activity at the premises, as defined in RCW 59.18.030, or allow another to engage in such activity at the premises, that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences. In determining whether a tenant is engaged in gang-related activity, a court should consider the totality of the circumstances, including factors such as whether there have been a significant number of complaints to the landlord about the tenant's activities at the property, damages done by the tenant to the property, including the property of other tenants or neighbors, harassment or threats made by the tenant to other tenants or neighbors that have been reported to law enforcement agencies, any police incident reports involving the tenant and the tenant's criminal history; and

(10) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligations under this chapter: Provided, That the tenant shall not be charged for normal cleaning if he or she has paid a nonrefundable cleaning fee.

Attachment 3
NOTICE REQUESTING REPAIRS

Date: _____

Landlord's name and address:

Dear _____:

This is to notify you that the rental unit at _____
_____ which you manage and which I
occupy needs repairs for the following defects:

1. _____
2. _____
3. _____

The Washington Residential Landlord Tenant Act requires that the landlord begin to make repairs requested by a tenant within a specific time period as follows:

1. Twenty-four (24) hours to repair the loss of hot or cold water, heat or electricity, or a condition imminently hazardous to life.
2. Seventy-two (72) hours when the defect deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord.
3. Ten (10) days in all other cases.

A list of landlord responsibilities required by the act is attached. If the repairs are not completed within the applicable period of time, I intend to use the remedies provided in the Landlord-Tenant Act.

Sincerely,

(sign your name)

(print your name)

Attachment 4
RENT ESCROW INSPECTION REQUEST

Date: _____

Name and Address of City Building Department:

Dear Building Inspector:

I believe I am living in substandard conditions. I have provided written notice to my landlord and have had no response. I am requesting that you do an inspection of the premises with regard to specific substandard and dangerous conditions covered by RCW 59.18.115. The conditions which need inspection include:

_____ rodent/pest infestation	_____ electrical/wiring problems
_____ plumbing, sewage	_____ water heater/pipes
_____ structural problems (roof/walls/windows)	_____ heating system/stove

In particular, I am having trouble with _____

Under the law, the landlord must be given 24-hour notice of the date and time of the inspection so that he has an opportunity to be present.

My landlord is:

Name: _____
Address: _____

Phone: _____

My address is: _____
_____. Please call me to arrange a date and time for inspection. I can be reached at _____
or _____.

Sincerely,

(Tenant's Signature)

Attachment 5

NOTICE TO LANDLORD OF RENT ESCROW

Name of Tenant: _____

Address of Tenant: _____

Name of Landlord: _____

Address of Landlord: _____

Name and Address of Escrow: _____

Date of Deposit of rent escrow: _____

Amount of rent deposited into Escrow: _____

The following condition(s) have been certified by a local building official to endanger, impair, or affect substantially the health or safety of a tenant:

I have determined in good faith that I am unable to repair these conditions through use of repair remedies authorized by RCW 59.18.100.

Written notice of the conditions needing repair was provided to the landlord on _____, and _____ days have elapsed and the repairs have not been made.

Funds have been deposited into escrow as described above.

Under penalty of perjury of the laws of the State of Washington, I certify that:

1. I have read the foregoing Notice to the Landlord of Rent Escrow, know the contents thereof and sign of my own free will; and

2. I mailed/delivered a copy of this Notice, together with a copy of the certification of condition(s), to the landlord at the above address on _____, 199__.

Dated _____, at _____, Washington.
(City)

Tenant's Signature

Attachment 6

**RCW 59.18.115 Substandard and dangerous conditions--Notice to
landlord—Government certification--Escrow account.**

(1) The legislature finds that some tenants live in residences that are substandard and dangerous to their health and safety and that the repair and deduct remedies of RCW 59.18.100 may not be adequate to remedy substandard and dangerous conditions. Therefore, an extraordinary remedy is necessary if the conditions substantially endanger or impair the health and safety of the tenant.

(2)(a) If a landlord fails to fulfill any substantial obligation imposed by RCW 59.18.060 that substantially endangers or impairs the health or safety of a tenant, including (i) structural members that are of insufficient size or strength to carry imposed loads with safety, (ii) exposure of the occupants to the weather, (iii) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (iv) lack of water, including hot water, (v) heating or ventilation systems that are not functional or are hazardous, (vi) defective, hazardous, or missing electrical wiring or electrical service, (vii) defective or inadequate exits that increase the risk of injury to occupants, and (viii) conditions that increase the risk of fire, the tenant shall give notice in writing to the landlord, specifying the conditions, acts, omissions, or violations. Such notice shall be sent to the landlord or to the person or place where rent is normally paid.

(b) If after receipt of the notice described in (a) of this subsection the landlord fails to remedy the condition or conditions within a reasonable amount of time under RCW 59.18.070, the tenant may request that the local government provide for an inspection of the premises with regard to the specific condition or conditions that exist as provided in (a) of this subsection. The local government shall have the appropriate government official, or may designate a public or disinterested private person or company capable of conducting the inspection and making the certification, conduct an inspection of the specific condition or conditions listed by the tenant, and shall not inspect nor be liable for any other condition or conditions of the premises. The purpose of this inspection is to verify, to the best of the inspector's ability, whether the tenant's listed condition or conditions exist and substantially endanger the tenant's health or safety under (a) of this subsection; the inspection is for the purposes of this private civil remedy, and therefore shall not be related to any other governmental function such as enforcement of any code, ordinance, or state law.

(c) The local government or its designee, after receiving the request from the tenant to conduct an inspection under this section, shall conduct the inspection and make any certification within a reasonable amount of time not more than five days from the date of receipt of the request. The local government or its designee may enter the premises at any reasonable time to do the inspection, provided that he or she first shall display proper credentials and request entry. The local government or its designee shall whenever practicable, taking into consideration the imminence of any threat to the tenant's health or safety, give the landlord at least twenty-four hours notice of the date and time of inspection and provide the landlord with an opportunity to be present at the time of the inspection. The landlord shall have no power or authority to prohibit entry for the inspection.

(d) The local government or its designee shall certify whether the condition or the conditions specified by the tenant do exist and do make the premises substantially unfit for human habitation or can be a substantial risk to the health and safety of the tenant as described in (a) of this subsection. The certification shall be provided to the tenant, and a copy shall be included by the tenant with the notice sent to the landlord under subsection (3) of this section. The certification may be appealed to the local board of appeals, but the appeal shall not delay or preclude the tenant from proceeding with the escrow under this section.

(e) The tenant shall not be entitled to deposit rent in escrow pursuant to this section unless the tenant first makes a good faith determination that he or she is unable to repair the conditions described in the certification issued pursuant to subsection (2)(d) of this section through use of the repair remedies authorized by RCW 59.18.100.

(f) If the local government or its designee certifies that the condition or conditions specified by the tenant exist, the tenant shall then either pay the periodic rent due to the landlord or deposit all periodic rent then called for in the rental agreement and all rent thereafter called for in the rental agreement into an escrow account maintained by a person authorized by law to set up and maintain escrow accounts, including escrow companies under chapter 18.44 RCW, financial institutions, or attorneys, or with the clerk of the court of the district or superior court where the

property is located. These depositories are hereinafter referred to as "escrow." The tenant shall notify the landlord in writing of the deposit by mailing the notice postage prepaid by first class mail or by delivering the notice to the landlord promptly but not more than twenty-four hours after the deposit.

(g) This section, when elected as a remedy by the tenant by sending the notice under subsection (3) of this section, shall be the exclusive remedy available to the tenant regarding defects described in the certification under subsection (2)(d) of this section: PROVIDED, That the tenant may simultaneously commence or pursue an action in an appropriate court, or at arbitration if so agreed, to determine past, present, or future diminution in rental value of the premises due to any defective conditions.

(3) The notice to the landlord of the rent escrow under this section shall be a sworn statement by the tenant in substantially the following form:

NOTICE TO LANDLORD OF RENT ESCROW

Name of tenant:

Name of landlord:

Name and address of escrow:

Date of deposit of rent into escrow:

Amount of rent deposited into escrow:

The following condition has been certified by a local building official to substantially endanger, impair, or affect the health or safety of a tenant:

That written notice of the conditions needing repair was provided to the landlord on . . . , and . . . days have elapsed and the repairs have not been made.

(Sworn Signature)

(4) The escrow shall place all rent deposited in a separate rent escrow account in the name of the escrow in a bank or savings and loan association domiciled in this state. The escrow shall keep in a separate docket an account of each deposit, with the name and address of the tenant, and the name and address of the landlord and of the agent, if any.

(5)(a) A landlord who receives notice that the rent due has been deposited with an escrow pursuant to subsection (2) of this section may:

(i) Apply to the escrow for release of the funds after the local government certifies that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly repaired. The escrow shall release the funds to the landlord less any escrow costs for which the tenant is entitled to reimbursement pursuant to this section, immediately upon written receipt of the local government certification that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly completed.

(ii) File an action with the court and apply to the court for release of the rent on the grounds that the tenant did not comply with the notice requirement of subsection (2) or (3) of this section. Proceedings under this subsection shall be governed by the time, service, and filing requirements of RCW 59.18.370 regarding show cause hearings.

(iii) File an action with the court and apply to the court for release of the rent on the grounds that there was no violation of any obligation imposed upon the landlord or that the condition has been remedied.

(iv) This action may be filed in any court having jurisdiction, including small claims court. If the tenant has vacated the premises or if the landlord has failed to commence an action with the court for release of the funds within sixty days after rent is deposited in escrow, the tenant may file an action to determine how and when any rent deposited in escrow shall be released or disbursed. The landlord shall not commence an unlawful detainer action for nonpayment of rent by serving or filing a summons and complaint if the tenant initially pays the rent called for in the rental agreement that is due into escrow as provided for under this section on or before the date rent is due or on or before the expiration of a three-day notice to pay rent or vacate and continues to pay the rent into escrow as the rent becomes due or prior to the expiration of a three-day notice to pay rent or vacate; provided that the landlord shall not be barred from commencing an unlawful detainer action for nonpayment of rent if the amount of rent that is paid into escrow is less than the amount of rent agreed upon in the rental agreement between the parties.

(b) The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, although any counterclaim shall be dismissed without prejudice if

the court or arbitrator determines that the tenant failed to follow the notice requirements contained in this section. Any counterclaim can only claim diminished rental value related to conditions specified by the tenant in the notice required under subsection (3) of this section. This limitation on the tenant's right to counterclaim shall not affect the tenant's right to bring his or her own separate action. A trial shall be held within sixty days of the date of filing of the landlord's or tenant's complaint.

(c) The tenant shall be entitled to reimbursement for any escrow costs or fees incurred for setting up or maintaining an escrow account pursuant to this section, unless the tenant did not comply with the notice requirements of subsection (2) or (3) of this section. Any escrow fees that are incurred for which the tenant is entitled to reimbursement shall be deducted from the rent deposited in escrow and remitted to the tenant at such time as any rent is released to the landlord. The prevailing party in any court action or arbitration brought under this section may also be awarded its costs and reasonable attorneys' fees.

(d) If a court determines a diminished rental value of the premises, the tenant may pay the rent due based on the diminished value of the premises into escrow until the landlord makes the necessary repairs.

(6)(a) If a landlord brings an action for the release of rent deposited, the court may, upon application of the landlord, release part of the rent on deposit for payment of the debt service on the premises, the insurance premiums for the premises, utility services, and repairs to the rental unit.

(b) In determining whether to release rent for the payments described in (a) of this subsection, the court shall consider the amount of rent the landlord receives from other rental units in the buildings of which the residential premises are a part, the cost of operating those units, and the costs which may be required to remedy the condition contained in the notice. The court shall also consider whether the expenses are due or have already been paid, whether the landlord has other financial resources, or whether the landlord or tenant will suffer irreparable damage. The court may request the landlord to provide additional security, such as a bond, prior to authorizing release of any of the funds in escrow.

Attachment 7

Cite as: 83 Wash.2d 22, 515 P.2d 160 (1973)

Supreme Court of Washington, En Banc.

Ronald D. FOISY and Marilyn E. Foisy, his wife,
Respondents,
v.
Richard Kent WYMAN, a single man, Appellant.

No. 42605.

Oct. 25, 1973.
Rehearing Denied Dec. 13, 1973.

Unlawful detainer action. The Superior Court, King County, F. A. Walterskirchen, J., entered judgment in favor of landlord, and tenant appealed. The Supreme Court, Hunter, J., held that in all contracts for renting of premises, oral or written, there is an implied warranty of habitability and breach of this warranty constitutes a defense in an unlawful detainer action, that fact that tenant knew of a substantial number of defects when he rented premises and fact that rent was reduced did not remove tenant from protection of implied warranty of habitability, that testimony relating to housing code violations was admissible, and that evidence of condition of premises was relevant to issue of rent due and owing.

Reversed and remanded with directions.

Brachtenbach, J., dissented and filed opinion in which Wright J., concurred.

Ryan, Judge pro tem., concurred in result of the dissent and filed opinion.

West Headnotes

[1] Landlord and Tenant [REDACTED] 291(12)
[233k291\(12\) Most Cited Cases](#)

Tenant, in unlawful detainer action, should have been permitted to introduce evidence in support of his theory of defense that landlord's failure to maintain premises in a habitable condition constituted a failure of consideration upon part of landlord and relieved tenant of his obligation to pay rent. [RCWA 59.12.030](#), [59.12.170](#).

[2] Landlord and Tenant [REDACTED] 125(1)

[233k125\(1\) Most Cited Cases](#)

[2] Landlord and Tenant [REDACTED] 290(3)
[233k290\(3\) Most Cited Cases](#)

In all contracts for renting of premises, oral or written, there is an implied warranty of habitability and breach of this warranty constitutes a defense in an unlawful detainer action. [RCWA 59.12.030](#), [59.12.170](#).

[3] Landlord and Tenant [REDACTED] 125(1)
[233k125\(1\) Most Cited Cases](#)

Fact that tenant knew of a substantial number of defects when he rented premises and that rent was reduced did not remove tenant from protection of implied warranty of habitability, as this type of bargaining by landlord with tenant is contrary to public policy and purpose of doctrine of implied warranty of habitability. Laws 1973, 1st Ex.Sess. ch. 207.

[4] Municipal Corporations [REDACTED] 122.1(4)
[268k122.1\(4\) Most Cited Cases](#)
(Formerly 268k122(4))

Copy of housing code, which was printed by authority of city, was prima facie evidence that the ordinances as printed and published were duly passed, and was properly authenticated. [RCWA 5.44.080](#).

[5] Landlord and Tenant [REDACTED] 291(12)
[233k291\(12\) Most Cited Cases](#)

Testimony relating to housing code violations was admissible in unlawful detainer action. [RCWA 59.12.030](#), [59.12.170](#).

[6] Landlord and Tenant [REDACTED] 291(12)
[233k291\(12\) Most Cited Cases](#)

Evidence of condition of premises was relevant, in unlawful detainer action, to issue of rent due and owing. [RCWA 59.12.030](#), [59.12.170](#).

[7] Landlord and Tenant [REDACTED] 125(1)
[233k125\(1\) Most Cited Cases](#)

Housing code violations in and of themselves do not

establish a prima facie case that the premises are uninhabitable, but are evidence which aids in establishing that the premises are uninhabitable. [RCWA 59.12.030, 59.12.170.](#)

[8] Landlord and Tenant  **290(3)**
[233k290\(3\) Most Cited Cases](#)

Unlawful detainer statutes are designed for defenses such as breach of implied warranty and habitability. [RCWA 59.12.030, 59.12.170.](#)

[9] Landlord and Tenant  **290(3)**
[233k290\(3\) Most Cited Cases](#)

Since affirmative defense of breach of implied warranty of habitability goes directly to issue of rent due and owing, which is one of basic issues in an unlawful detainer action, such defense is available in an unlawful detainer action. [RCWA 59.12.030, 59.12.170.](#)

[10] Landlord and Tenant  **291(1)**
[233k291\(1\) Most Cited Cases](#)

Landlord's three-day notice to pay rent or vacate premises, which called for payment of balance due under lease plus a certain amount for two months that tenant remained on premises after expiration of lease, was in substantial compliance with statute, even though amount demanded was more than trial court found was actually due and owing, where there was a conflict as to amount of monthly rental due for months following expiration of lease. [RCWA 59.12.030, 59.12.170.](#)

[11] Constitutional Law  **46(1)**
[92k46\(1\) Most Cited Cases](#)

Where substantial legislative or decisional changes in applicable statutory provisions have been made, thereby precluding imposition of challenged provision, the constitutional issue need not be resolved.

****161** Legal Services Center, Steve Frederickson, Seattle, for appellant.

***23** Thomas J. Isaac, Seattle, for respondents.

****162** HUNTER, Associate Justice.

This is an unlawful detainer action in which the plaintiff (respondent), Ronald D. Foisy, is seeking the

possession of his real property, unpaid rent and damages. The defendant (appellant), Richard Kent Wyman, appeals from a judgment in favor of the plaintiff.

In his complaint, the plaintiff alleged in effect: (1) That on December 31, 1970, the defendant took possession of a house which the plaintiff is seeking to recover, pursuant to a 6-month lease requiring \$300 to be paid for said term, plus water and other utility charges; (2) that during the term of the lease the defendant paid the sum of \$95, leaving \$205 still owing for the 6-month period; (3) That the defendant remained upon the premises after the expiration of the lease; (4) That the rental payment after the expiration of the lease was to be \$75 per month; (5) That after the defendant refused to pay the accrued rent, the plaintiff served a 3-day notice to pay rent or vacate upon the defendant on August 27, 1971; (6) That the defendant failed to pay any of the amounts owing after the 3-day notice was served upon him.

The defendant's answer raised several affirmative defenses including breach of implied warranty of habitability.

During trial the defendant testified that he took possession of the house on March 3, 1971. It appears that the ***24** parties executed the lease in question on March 8, 1971, although the lease was dated December 31, 1970, and was to cover a term of six months, which was to commence on January 1, 1971, and end on June 30, 1971.

The lease in question also contained an option to purchase. The testimony of the defendant indicates that he thought he was purchasing the house rather than renting it. His testimony also indicates that the house contained a number of defects when he entered into the lease and it indicates that he was aware of some of the defects when he agreed to rent the house, but not all of them.

The trial court concluded that the defendant was guilty of unlawful detainer of the premises rented to him by the plaintiff. However, it refused to enforce the provisions of what it termed the 'purported lease.' It found that the reasonable rental for the period of occupancy of the premises was the sum of \$50 per month commencing with March 3, 1971, until such time as the defendant removed himself. In effect, the court held the lease was invalid. The court also held that a writ of restitution should issue to the sheriff to require the surrender of possession if the defendant did not voluntarily withdraw and that damages for the period March 3, 1971, through April 3, 1972, were to

be doubled if the defendant did not surrender the premises by April 3, 1972. The defendant appeals, although the plaintiff does not cross-appeal from the court's findings.

[1] The primary contention raised by the defendant is that the trial court erred in refusing to accept evidence as to his affirmative defense of breach of implied warranty of habitability. The defendant argues that the plaintiff's failure to maintain the premises in a habitable condition constitutes a failure of consideration upon the part of the plaintiff and relieves the defendant of his obligation to pay rent. We agree that the tenant should have been permitted to introduce evidence at trial in support of this theory of defense.

The premises in question, according to the testimony of the defendant, contained a number of defects including a lack of heat, no hot water tank, broken windows, a broken *25 door, water running through the bedroom, an improperly seated and leaking toilet, a leaking sink in the bathroom, broken water pipes in the yard and termites in the basement. No objection was made to the introduction of this testimony. The testimony of the defendant also indicates that he painted the interior and made repairs upon the premises, but ceased making repairs when he learned of a municipal court action being initiated against the plaintiff as a result of numerous housing **163 code violations within the house. In addition, the record reveals that the landlord was informed of the defects and was prosecuted successfully for violations of the Seattle housing code.

During the trial the defendant attempted to introduce the testimony of two housing inspectors as to the housing code violations which existed on the premises. The trial court sustained the plaintiff's objections to this testimony upon the theory that the condition of the premises was not relevant to the issue before the court. We disagree with the reasoning of the trial court in refusing to accept the evidence as to the condition of the premises, although it should be stated that this issue has not been heretofore specifically addressed in this jurisdiction in relation to our unlawful detainer statutes.

Throughout the United States, the old rule of caveat emptor in the leasing of premises has been undergoing judicial scrutiny.

In [Pines v. Perssion, 14 Wis.2d 590, 596, 111 N.W.2d 409, 412 \(1961\)](#), the court stated:

To follow the old rule of no implied warranty of habitability in leases would, in our opinion, be

inconsistent with the current legislative policy concerning housing standards. The need and social desirability of adequate housing for people in this era of rapid population increases is too important to be rebuffed by that obnoxious legal cliché, Caveat emptor. Permitting landlords to rent 'tumbledown' houses is at least a contributing cause of such problems as urban blight, juvenile delinquency and high property taxes for conscientious landowners.

See *26 [Reste Realty Corp. v. Cooper, 53 N.J. 444, 251 A.2d 268 \(1969\)](#); [Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 \(1970\)](#); [Lemle v. Breeden, 51 Haw. 426, 462 P.2d 470 \(1969\)](#); [Javins v. First Nat'l Realty Corp., 138 U.S.App.D.C. 369, 428 F.2d 1071 \(1970\)](#), cert. denied, [400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 \(1970\)](#), and [Jack Spring, Inc. v. Little, 50 Ill.2d 351, 280 N.E.2d 208 \(1972\)](#).

In *Lemle v. Breeden*, *Supra*, the court reviewed the rule of caveat emptor and the current trend toward finding an implied warranty of habitability in leases, and stated on page 433, [462 P.2d 474](#):

The application of an implied warranty of habitability in leases gives recognition to the changes in leasing transactions today. It affirms the fact that a lease, is, in essence, a sale as well as a transfer of an estate in land and is, more importantly, a contractual relationship. From that contractual relationship an implied warranty of habitability and fitness for the purposes intended is a just and necessary implication. It is a doctrine which has its counterparts in the law of sales and torts and one which when candidly countenanced is impelled by the nature of the transaction and contemporary housing realities. Legal fictions and artificial exceptions to wooden rules of property law aside, we hold that in the lease of a dwelling house, such as in this case, there is an implied warranty of habitability and fitness for the use intended.

(Footnote omitted.)

In *Javins v. First Nat'l Realty Corp.*, *Supra*, the court analyzed the various exceptions to the common law rule that the lessor has no duty to repair and stated on page 1078:

These as well as other similar cases demonstrate that some courts began some time ago to question the common law's assumptions that the land was the most important feature of a leasehold and that the tenant could feasibly make any necessary repairs himself. Where those assumptions no longer reflect contemporary housing patterns, the courts have created exceptions to the general rule that landlords have no duty to keep their premises in repair.

It is overdue for courts to admit that these assumptions are no longer true with regard to all urban housing. *27 Today's **164 urban tenants, the vast majority of whom live in multiple dwelling houses, are interested, not in the land, but solely in 'a house suitable for occupation.' Furthermore, today's city dweller usually has a single, specialized skill unrelated to maintenance work; he is unable to make repairs like the 'jack-of-all-trades' farmer who was the common law's model of the lessee. Further, unlike his agrarian predecessor who often remained on one piece of land for his entire life, urban tenants today are more mobile than ever before. A tenant's tenure in a specific apartment will often not be sufficient to justify efforts at repairs. In addition, the increasing complexity of today's dwellings renders them much more difficult to repair than the structures of earlier times. In a multiple dwelling repair may require access to equipment and areas in the control of the landlord. Low and middle income tenants, even if they were interested in making repairs, would be unable to obtain any financing for major repairs since they have no long-term interest in the property.

We find the reasoning of these cases extremely persuasive. Any realistic analysis of the lessor-lessee or landlord-tenant situation leads to the conclusion that the tenant's promise to pay rent is in exchange for the landlord's promise to provide a livable dwelling. As Judge Skelly Wright stated in the Javins case on page 1074:

When American city dwellers, both rich and poor, seek 'shelter' today, they seek a well known package of goods and services--a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.

(Footnote omitted.) [Javins v. First Nat'l Realty Corp.](#), 138 U.S.App.D.C. 369, 428 F.2d 1071 (1970), cert. denied, 400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 (1970). The value of the lease today then, whether it is oral or written, is that it gives the tenant a place to live, and he expects not just space but a dwelling that protects him from the elements of the environment without subjecting him to health hazards.

[2] In [House v. Thornton](#), 76 Wash.2d 428, 457 P.2d 199 (1969), *28 we rejected the doctrine of caveat emptor as it applied to the sale of a new residence and found an implied warranty that the structure is fit for the buyer's intended purpose. In doing so, we noted that the old rule of caveat emptor has little relevance

to the sale of a brand-new house by a vendor-builder to a first buyer for the purposes of occupancy. By analogy, the old rule of caveat emptor has little relevance to the renting of premises in our society. There can be little justification for following a rule that was developed for an agrarian society and has failed to keep pace with modern day realities. We therefore hold that in all contracts for the renting of premises, oral or written, there is an implied warranty of habitability and breach of this warranty constitutes a defense in an unlawful detainer action. See [Javins v. First Nat'l Realty Corp.](#), *Supra*; [Lund v. MacArthur](#), 51 Haw. 473, 462 P.2d 482 (1969); [Marini v. Ireland](#), 56 N.J. 130, 265 A.2d 526 (1970), and [Jack Spring, Inc. v. Little](#), 50 Ill.2d 351, 280 N.E.2d 208 (1972).

[3] It can be argued, however, that the defendant should not be entitled to the protection of an implied warranty of habitability since he knew of a substantial number of defects when he rented the premises and the rent was reduced from \$87 per month to \$50 per month. We believe this type of bargaining by the landlord with the tenant is contrary to public policy and the purpose of the doctrine of implied warranty of habitability. A disadvantaged tenant should not be placed in a position of agreeing to live in an uninhabitable premises. Housing conditions, such as the record indicates exist in the instant case, are a health hazard, not only to the individual tenant, but to the community which is exposed to said individual. As the court recognized in [Pines v. Persson](#), *Supra*, such housing conditions are at least a contributing cause of such problems as urban blight, **165 juvenile delinquency and high property taxes for the conscientious landowners.

Our belief that public policy demands such a result is reinforced by our review of Laws of 1973, 1st Ex.Sess., ch. 207, which became effective July 16, 1973. The legislature *29 in passing this bill and the Governor in signing it have recognized that public policy demands this result. Laws of 1973, 1st Ex.Sess., ch. 207, provides in part:

Sec. 6. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal

forces and loads to which they may be subjected;

* * *

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

* * *

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weathertight condition;

* * *

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

* * *

Sec. 8. The tenant shall be current in the payment of rent before exercising any of the remedies accorded him under the provisions of this chapter: Provided, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: Provided further, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding *30 to raise the defense that there is no rent due and owing.

* * *

Sec. 10. . . .

* * *

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself in return for cash payment or a reasonable reduction in rent, the agreement thereof to be agreed upon between the parties, and such agreement does not alter the landlord's obligations under this chapter.

It may also be argued that the defendant should not be afforded the protection of the doctrine of implied warranty of habitability since the defendant signed a lease which contained an option to purchase. However, as heretofore stated, the trial court failed to recognize the validity of the lease. There is no cross-appeal from this determination and we are therefore bound by the trial court's decision.

The plaintiff argues that the trial court was correct in disregarding the Seattle housing code as it was improperly pleaded and no properly authenticated copy of the housing code was offered. These issues were not before the court when it rejected the testimony of the housing inspectors. It was not until after the court had rejected the testimony of the housing inspectors on the basis of their testimony being irrelevant that the housing code was offered into evidence. Had the court rejected the housing code on the grounds suggested by **166 the plaintiff, the defendant would have been in a position to move to amend his pleadings. The argument as to the housing code not being properly authenticated, we believe, is without merit in view of [RCW 5.44.080](#) which states:

When the ordinances of any city or town are printed by authority of such municipal corporation, the printed copies thereof shall be received as prima facie evidence that such ordinances as printed and published were duly passed.

[4] The copy of the housing code that was offered into evidence by the defendant is printed by authority of the city *31 of Seattle and is therefore prima facie evidence that the ordinances as printed and published were duly passed.

[5][6][7] The testimony relating to the housing code violations should have been admitted into evidence, and the trial court erred in ruling that the condition of the premises was not relevant to the issue of rent due and owing. While the housing code violations in and of themselves do not establish a prima facie case that the premises are uninhabitable, they are evidence which aids in establishing that the premises are uninhabitable. [FN1]

[FN1]. Evidence of one or two minor infractions of a housing code which do not affect habitability are inconsequential and would not entitle the tenant to a reduction in rent. Also, the tenant's defense does not depend on official inspection or official finding of violations of a city housing code. [Javins v. First Nat'l Realty Corp.](#), 138 U.S.App.D.C. 369, 428 F.2d 1071 (1970), cert. denied, 400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 (1970), and [Diamond Housing Corp. v. Robinson](#), 257 A.2d 492 (D.C.App.1969).

[8] The plaintiff argues, in effect, however, that the unlawful detainer statutes are not designed for

defenses such as breach of implied warranty of habitability due to the nature of the action. In light of our previous discussion, we believe this to be without merit.

One of the basic issues in an unlawful detainer action of this nature is whether or not there is any rent due. [RCW 59.12.170](#), which governs the entry of judgment and execution in an unlawful detainer action, states that upon a finding of default in the payment of rent, 'the judgment shall also declare the forfeiture of the lease, agreement or tenancy.' [RCW 59.12.030](#) provides:

A tenant of real property for a term less than life is guilty of unlawful detainer either:

* * *

(3) When he continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises . . .

[9] Since the affirmative defense of breach of implied warranty of habitability goes directly to the issue of rent due *32 and owing, which is one of the basic issues in an unlawful detainer action as the above statutes indicate, we now hold said defense is available in an unlawful detainer action of this nature. See *Jack Spring, Inc. v. Little*, *supra*.

[10] The defendant also contends that the trial court erred in rendering judgment in the instant case, since the amount demanded in the 3-day notice was more than the trial court found was actually due and owing. We disagree.

In [Provident Mutual Life Ins. Co. v. Thrower](#), 155 Wash. 613, 617, 285 P. 654, 655 (1930), we stated:

As to the form and contents of the notice or demand, a substantial compliance with the statute is sufficient.

See [Sowers v. Lewis](#), 49 Wash.2d 891, 307 P.2d 1064 (1957). See also [Erz v. Reese](#), 157 Wash. 32, 288 P. 255 (1930) (wherein we stated on page 35 that 'we have never adopted the strictest rule of construction as to the form or contents of such notices under our unlawful detainer statutes, chiefly for the reason, doubtless, that the statutes prescribe no form.') In the *Provident Mutual* case the notice was defective in three respects: (1) It contained the signature **167 of the agent rather than the owner; (2) it overstated the amount of rent due by \$165 as found by the trial court; and (3) it defectively described the premises. Although we did not specifically address the issue of the overstatement of

the amount of rent due, we did hold the notice substantially complied with the requirements of Rem.Comp.Stat., s 812 (now [RCW 59.12.030](#)).

In the instant case, the 3-day notice to pay rent or vacate the premises that was served upon the defendant called for the payment of \$205, the balance due under the lease, plus \$75 per month for July and August. There was no dispute as to the monthly rental payment under the terms of the purported lease; however, there was a conflict as to the amount of the monthly rental due for the months of July and August. The plaintiff testified the rent for those months was to be \$75 per month, and the defendant testified that it *33 was to be \$50 per month. It appears that the plaintiff's demand for rental in the notice was in conformity with his good faith determination as to the amount of rental due, and that the defendant was not prejudiced as he could have tendered to the plaintiff the amount of rental due according to his understanding of the agreement. See *C.J. Peck, Landlord and Tenant Notices*, 31 Wash.L.Rev. 51, 61 (1956). In tendering the amount due to the plaintiff, of course, he would deduct that amount due which he believed he was relieved from paying due to the landlord's breach of his implied warranty of habitability.

We believe that under the above facts, the plaintiff's demand for rental was in substantial compliance with the statute and the fact that there was a dispute as to the amount of rent due, which was later determined contrary to the plaintiff, should not invalidate the unlawful detainer proceeding.

The defendant also contends that the portion of [RCW 59.12.170](#), which authorizes the doubling of damages, is unconstitutional as it is in violation of the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

We need not reach this issue in light of the passage of the 'Residential Landlord-Tenant Act of 1973' (Laws of 1973, 1st Ex.Sess., ch. 207), which eliminated the mandatory double damage provision from the law.

[11] Where substantial legislative or decisional changes in the applicable statutory provisions have been made thereby precluding the imposition of the challenged provision, the constitutional issue need not be resolved. [Grays Harbor Paper Co. v. Grays Harbor County](#), 74 Wash.2d 70, 442 P.2d 967 (1968); [State School Directors Ass'n v. Department of Labor & Indus.](#), 82 Wash.2d 367, 510 P.2d 818 (1973). See

also [State v. Vidal, 82 Wash.2d 74, 508 P.2d 158 \(1973\)](#), and [State v. Baker, 81 Wash.2d 281, 501 P.2d 284 \(1972\)](#).

As we stated in [Sorenson v. Bellingham, 80 Wash.2d 547, 558, 496 P.2d 512, 518 \(1972\)](#):

It is a general rule that, where only moot questions or *34 abstract propositions are involved, or where the substantial questions involved in the trial court no longer exist, the appeal, or writ of error, should be dismissed. There is an exception to the above stated proposition. The Supreme Court may, in its discretion, retain and decide an appeal which has otherwise become moot when it can be said that matters of continuing and substantial public interest are involved. . . . This exception to the general rule obtains only where the real merits of the controversy are unsettled and a continuing question of great public importance exists.

(Citations omitted.)

Given the passage of the new landlord-tenant act and the absence of any actual trial court imposition of double damages in the instant case, the exception to the above rule is not in force and we therefore need not comment further upon this issue.

For the guidance of the trial court at the new trial to which the defendant is entitled, **168 the finder of fact must make two findings where the defendant claims the landlord has breached his implied warranty of habitability: (1) Whether the evidence indicates that the premises were totally or partially uninhabitable during the period of habitation and, if so, (2) what portion, if any or all, of the defendant's obligation to pay rent is relieved by the landlord's total or partial breach of his implied warranty of habitability. If the finder of fact determines that the entire rental obligation is extinguished by the landlord's total breach, then the action for unlawful detainer based on nonpayment of rent must fail. If, on the other hand, the court determines that the premises are partially habitable, and the tenant failed to tender to the plaintiff a sufficient amount to pay rent due for the partially habitable premises, then judgment shall be entered in accordance with [RCW 59.12.170](#).

The judgment of the trial court is reversed and the case is remanded for a new trial consistent with this opinion.

HALE, C.J., and ROSELLINI, HAMILTON, STAFFORD and UTTER, JJ., concur.

*35 BRACHTENBACH, Associate Justice (dissenting).

Ignoring the defendant's own testimony, the majority cast this dispute into a traditional landlord-tenant battle and from that relationship creates an implied warranty of habitability. That creation might well be a desirable change in Washington law, but this simply is not the case in which it should be implemented.

The majority's application of such a warranty to the defects presented in this case and even its characterization of the defendant as a mere 'tenant' are unsound in light of the defendant's testimony, elicited by his own counsel:

Q. And what was the agreement between you and the Foiseys relating to the purchase of that house?

A. The agreement was that I was to pay \$50 a month to buy the house . . . Q. So, it was your understanding that the agreement was that you were to buy the house for \$50 a month? A. That was my understanding . . . Q. At the time you moved in, were there defects on the premises? A. All kinds but I tried my best to bring them up to some remedy of standard . . . Q. What was your understanding as to what you had to do to exercise the option? A. My understanding was to clean the house up and fix it up to some degree. Q. So, in other words, you thought that--A. Take care of it like a regular home owner. I figure it was mine and I was going to try to do the best I could but I run into all kinds of difficulty with the permit . . . Q. So, it was your understanding that you were purchasing the house and that is your only obligation to pay \$50 a month? A. That was the whole understanding at the conception of the deal because her mother told me (objection). Q. So, the only time prior to March you were on the premises was to just look at it? A. Right. I told them I would buy and they said fine. They put me in it for \$50 a month. Q. Had you done any work cleaning up the house or anything around the premises before you moved in on March? A. Oh, yes, I had to. Q. Before you moved in? A. Right, I had to. In the basement there was termites and there was things. Q. When were you doing those things? A. In February . . . Q. At that time did you have any agreement with the Foiseys as to whether or not you were going to purchase it? A. I had the agreement before I walked in *36 that house. That's when they told me you can have it for \$50 a month. They wanted \$87 a month. I said it isn't worth it because it's sitting still and the windows are out. (Interruption). Q. That understanding was

that you were going to pay \$50 per month? A. Correct. That is the only way I would walk in that house because I wasn't in the proper position to bargain. They bargained to me because I ****169** saw a deal and I grabbed it . . . Q. As far as you were concerned, you never received any word that you were anything but a purchaser, is that right? A. To my knowledge, that was the only way I would have gone into that house as a purchaser. What would I want to rent it for I had a house of my own.

From that testimony it is perfectly clear that the defendant was fully aware of the defects and deficiencies in the premises. Those defects and deficiencies were the very reason he was willing and able to negotiate lower payments.

It requires no authority to sustain the proposition that a person who takes possession of premises with known defects, intends to repair those defects, bargains for reduced monthly payments and characterizes the transaction as a 'deal' which he 'grabbed,' neither deserves nor needs the protection of an implied warranty of habitability.

The fact of the matter, apparent from the record, is that the defendant encountered difficulties with his continued, anticipated repairs when the housing code violations pending against the plaintiffs came to light. That situation might give rise to other remedies, but they are not asserted here.

But apart from the foregoing, and even if the defendant is to be characterized as a tenant in the strict legal sense of that word, the majority fails to recognize that the Seattle housing code was not properly before the trial court.

In his answer, affirmative defense and counterclaim, the defendant alleged violations of the provisions of the housing, building, fire, health and sanitation codes of the city of Seattle. Such shotgun pleading is a clear violation of [CR 9\(i\)](#). At the time of trial, absolutely no proof of the housing code was provided, except to offer an unauthenticated, unidentified booklet entitled 'Housing Code, City of Seattle.' ***37** The trial court, on that ground alone, correctly rejected testimony about violations of a city ordinance which had not been properly pleaded, properly authenticated or properly identified.

The trial court should be affirmed.

WRIGHT, J., concurs in the dissent.

RYAN, Judge pro tem. (concurring in the result of the dissent).

However desirable the majority' endorsement of the doctrine of implied warranty of habitability may be, this is not a proper case for its application.

I would, therefore, concur in the result of the dissent.

515 P.2d 160, 83 Wash.2d 22

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