

Tenants: What to do If Your Rental Needs Repairs

Introduction

This publication provides 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](#)
- [Your Rights as a Tenant in Washington](#)
- [Recovering Your Security Deposit](#)
- [Public Housing Evictions](#)
- [HUD Housing Evictions](#)
- [Tenants' Rights Under the Mobile Home Landlord Tenant Act.](#)

Important

- Before you try to exercise any of the remedies described in this publication, read this publication carefully.
- To use the repair remedies provided in the Act, you must be current in rent and any utilities you're obligated to pay.
- Both the tenant and the landlord must perform duties and exercise remedies under the Act in good faith.
- Under the Act, you're not entitled to withhold rent, even if the landlord hasn't made repairs. (See "Remedies under the Act," discussed below. See also "Warranty of Habitability," discussed below.)
- If you receive an unlawful detainer (eviction) notice, consult an attorney and read our publications [Your Rights as a Tenant in Washington](#) and [Eviction and Your Defense](#). When you're consulting an attorney, you must have all written materials relating to your tenancy available, including your lease or rental agreement, rent receipts, and any written notices given to or received from the landlord. (Keep copies of all documents.) If you're low-income, call CLEAR's intake line at 1-888-201-1014 to ask for assistance.

What are the Landlord's Repair and Maintenance Duties?

The landlord's duties under the Act related to repair and maintenance of the premises are

summarized below. 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 [Your Rights as a Tenant in Washington](#) and [Eviction and Your Defense](#). The tenant's duties under the Act are discussed in our [Your Rights as a Tenant in Washington](#) publication. You can find the law online at <http://apps.leg.wa.gov/rcw/default.aspx?cite=59.18> (landlord's duties are [here](#), tenant's duties are [here](#)) or at your local law library.

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 doesn't have to control infestation that occurs after the beginning of the 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's 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 isn’t liable for defective conditions caused by the tenant, or by the tenant’s family or guests.
- The landlord isn’t liable for defective conditions caused by the tenant’s unreasonable refusal to allow the landlord to enter the residence to make repairs.

What should I do when my rental needs repairs?

You Must Provide Written Notice!

- First you must give the landlord **written notice** of what needs to be fixed. A written notice is required even if the landlord already knows about the needed repairs and even if you’ve told the landlord verbally. A sample notice requesting repairs is included and the end of this publication.
- In your notice, include your name, the date, the owner’s name, your address, and a description of what needs to be repaired. The notice may also include a copy of the landlord’s duties under the Act.
- In preparing a notice of needed repairs, you should go through the entire rental premises, listing needed repairs room-by-room and adding any repairs needed to the outside or common areas.
- “Delivery” of a notice requesting repairs is all that the Act requires. In order to prove “delivery” you should 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’s different from the manager, you can send copies of the notice to both. It isn’t required.
- You should keep, for your 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.

How Soon Does the Landlord have to Begin Repairs after getting 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/her control, the repairs must still be completed as soon as possible.

Can I Report to Government Agencies to get Repairs Made?

You 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 you’re in compliance with the act, the landlord must not retaliate against you for good faith complaints to government authorities. (See “Retaliation,” below, and our [Your Rights as a Tenant in Washington](#) publication.)

If the landlord fails to remedy a defective condition after receiving your written notice of the problem, calling a local code inspector to request an inspection may provide the motivation the landlord needs to correct the problem. It 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 against you by the landlord, 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 the landlord may be fined or be given some other penalty. If a dwelling’s in bad enough condition, the city may condemn some or all of the building and may require you to move out on very short notice.

What Can I Do 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 you, and after the applicable 24 hour, 3 day or 10 day period to begin repairs has expired, you have the following options:

1. **Move out:** You may terminate the rental agreement by giving written notice to the landlord and moving out immediately without further obligation under the rental agreement. You’ll be entitled to a refund of any prepaid rent. You’ll also be entitled to a refund of the security deposit in accordance with the usual security deposit rules. (See our [Your Rights as a Tenant in Washington](#) and [Recovering Your Security Deposit](#) publications.)
2. **File a lawsuit:** You may sue the landlord in state court for any remedy provided by the Act or otherwise provided by law.
3. **Arbitration or mediation:** If the landlord agrees, you may try to settle the dispute through arbitration or mediation.
4. **Pursue other remedies:** You may pursue other remedies available under the Act. (See below.)

What Does the Act Say I Can Do if the Landlord Won't Make Repairs?

You may use the following remedies only if you're current in rent and utilities and the landlord doesn't start repairs within the required time period after receiving written notice:

1. Can I Withhold Rent?

Under the Act, you're not entitled to withhold rent, even if the landlord hasn't made repairs. If you withhold rent, you lose the right to use the limited repair remedies provided by the Act. You also give 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. What is "Repair and Deduct" and How Can I Use it to Make Repairs?

If the landlord hasn't started the repair within the required time period following receipt of proper written notice, or if the landlord doesn't promptly finish the repairs (and if you can't or don't want to move out), you 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:

- You must be current in rent and any utilities you're required to pay.
- You must deliver a written notice to the landlord or to the person who collects the rent as described above. See the sample notice at the end of this publication.
- You 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.)
- You must serve, by first class mail or in person, your own good faith written estimate of the cost of having the repair performed (in addition to the written notice) if:
 - the repair must be performed by a licensed or registered repair person; or
 - the cost of the repair will be more than two months' rent.
- You may submit the written estimate at the same time as your written notice of the needed repair.
- If the specific needed repair requires the landlord to begin the repair within 10 days (See "Time Periods," above), you may not enter into a contract for repairs for 2 days after delivering the written estimate. So you should serve the written estimate at the same time as the written notice requesting repairs or as soon as possible afterwards. This 2-day period doesn't apply if the repairs must be made within 24 hours or within 3 days.
- You 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.
- You must make arrangements to pay the repair person.
- You must give the landlord an opportunity to inspect the work. You should provide the landlord with a written notice that the repairs have been finished 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, you may deduct the cost of repairs from the *next month's* rent.
- You cannot deduct more for each repair than one month's rent. You can't deduct more than two months' rent in any 12-month period.

3. Can I Use “Repair and Deduct” to Make Repairs Myself?

As long as the cost of the repair isn't more than one-half month's rent and the repair doesn't require a licensed repair person, you may make the repair yourself. In order to use Self-Help Repair and Deduct:

- You must be current in rent and any utilities you're obligated to pay.
- You must deliver a written notice to the landlord or to the person who collects the rent as described above. (See the sample notice at the end of this publication.)
- You 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.)
- You don't have to provide a separate written estimate of the cost of repairs for a self-help repair.
- You must perform the repair in a workman-like manner.
- You must give the landlord an opportunity to inspect the work. You should provide the landlord with a written notice that the repairs have been finished and are ready for inspection. The written notice may suggest a date for an inspection.
- You may also state in writing that if the landlord doesn't reply by that date or suggest an alternative date for the inspection, you'll assume 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, you may deduct the cost of repairs from the *next month's* rent.
- You can't deduct more than one month's rent for each self-help repair. You can't deduct more than one month's rent in any 12-month period.

4. Can Building Code Enforcement/Government Inspection Help with Repairs?

- Any time you're worried about the conditions of the dwelling unit, you 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.
- Many code violations don't require vacating the building. However, if the dwelling unit is in very bad condition, the city or county may require you to vacate the building on very short notice.

- The response of local government officials to your request for inspection or code enforcement will vary dramatically depending on the particular city or county in which you reside. 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. **What's Rent Escrow and Can I Use it to get Repairs Made?**

- If you can't make repairs using Repair and Deduct (example: if the repairs would cost more than one month's rent), and if the conditions of the dwelling unit substantially endanger or impair your health and safety, you 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](#). 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, you must meet certain conditions and carefully follow the steps outlined below.
 1. You must be current in rent and any utilities you're obligated to pay.
 2. The landlord must have failed to start repairs within the required time period (see "Time Periods," above) after receipt of written notice from you of a needed repair (See "Written Notice Required," above.)
 3. You must determine in good faith that other repair remedies (example: repair and deduct) won't fix the problems.
 4. A local government representative must certify in writing that the defect exists and substantially endangers your health or safety.
 - a. You 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 attached to this publication.)
 - 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 you can't obtain the necessary certification from the local government. (Remember: without a government certification, you can't use the rent escrow remedy.)
 5. The inspector must give the landlord 24 hours' notice before the inspection date and time. The landlord can 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: You 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 you first deposit rent in escrow. (See Notice of Rent Escrow attached to the end of this publication.)
 8. You should consult an attorney once the inspector has certified the dwelling unit as eligible for escrow before placing rent in an escrow account.
 9. Either you or the landlord may file a lawsuit to obtain the release of rent money deposited in escrow. The court or arbitrator may determine whether past, present, or future rent should be reduced because of any defects.
 10. 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.

What's the 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
- A statutory warranty of habitability was also created when the Washington Legislature enacted the [Residential Landlord Tenant Act](#). It 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 your health and safety. (See “Landlord’s Repair and Maintenance Duties,” above.)

How Does the Warranty of Habitability Apply to my landlord?

- The warranty of habitability is basically the landlord's guarantee that residential rental premises are safe enough for you to live in.
- No landlord can require you to waive (give up) this warranty as a condition of your tenancy.
- Any provision of a rental agreement that states that the premises aren't governed by the

warranty of habitability or tries 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.

How Does the Warranty of Habitability Apply to Me?

- If the premises are partially or totally uninhabitable because the landlord failed to make needed repairs, you 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 won't necessarily amount to a breach (violation) of the warranty of habitability if they don't affect your ability to live safely in the residence.
- Rent withholding is usually a very dangerous and unwise strategy, particularly for month-to-month tenants. We can't predict how much rent a tenant could safely withhold.

Can I Use the Warranty of Habitability as a Defense to an Eviction Action?

- 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) (a copy of the decision is included at the end of this publication), and not on the Residential Landlord-Tenant Act.
- If you assert a "breach of the warranty of habitability" defense 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 your tenancy.
 2. It will decide what the reduction in the rental value for the unit should be during the term of your tenancy.
- Courts find that making such decisions is extremely hard without expert testimony. 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's no agreed-upon standard for calculating the appropriate reduction in rental value. 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 you owe some amount of rent, even as little as \$1.00, and you didn't tender the rent owed 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. You've paid that \$600 for six months (\$3,600 altogether), but then missed one month's rent payment, causing the landlord to file 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, you'd owe a total of \$2,800 over the 7-month period (the six months you paid and the one month you didn't). Since you've already paid \$3,600, you don't owe rent. The court shouldn't evict you. In addition, the landlord would have to lower the rent to \$400 a month until the apartment is fixed.
- If the court found that the apartment was worth more than you 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 you 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.)

What Evidence Can I Use to Support My Claim?

- A very useful and inexpensive way to prove a claim of the landlord's breach (violation) of the warranty of habitability is to get reports and testimony from housing code inspectors. (See "Building Code Inspection/Government Inspection," above.)
- Photographs are also very helpful.
- It's best to have a witness testify regarding rental values in the community, and what the rental unit was actually worth considering the defects.
- 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.
- You should know what a witness will say before having him/her say it in court or in a statement submitted to the court.

Can I Sue the Landlord for a Rent Reduction?

- Maybe. It's possible to use a breach of the warranty of habitability claim to file a lawsuit against the landlord and seek a court-ordered rent reduction, even when the landlord hasn't started an eviction action. But this may be difficult, because of the problems courts have in determining the seriousness of the defects and the proper amount of the rent reduction.
- If you believe the needed repairs are bad enough to justify a rent reduction, you can file an action in Small Claims Court to try to force the landlord to return rent that's already been paid (See the "[Small Claims Court](#)" publication available at [washingtonlawhelp.org](http://www.washingtonlawhelp.org)). Or you can file an action in Superior Court for past and future reduction of rent.
- You have the right to present a breach of the warranty of habitability claim as a defense to an eviction for nonpayment of rent. However, it can be risky. You generally shouldn't withhold part or all of the rent on the assumption that a court will agree with you on how

much the apartment was actually worth. If you guess wrong and the court thinks you withheld too much, you may be evicted without the chance to make up the difference.

What if the Landlord Retaliates against Me for Complaining to the City?

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

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This publication provides general information concerning your rights and responsibilities. It's not intended as a substitute for specific legal advice. This information is current as of the date of its printing, May 2011.

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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)

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)

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 _____, 20____.

Dated _____, at _____, Washington.
(City)

Tenant's Signature

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  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  125(1)


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

[2] Landlord and Tenant  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  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  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  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  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  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 keeps 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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