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Waiving the Implied Warranty of Habitability in Residential Leases: *Foisy v. Wyman*, 83 Wash. 2d 22, 515 P.2d 160 (1973)

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Waiving the Implied Warranty of Habitability In Residential Leases

Foisy v. Wyman, 83 Wash. 2d 22, 515 P.2d 160 (1973).

The common-law rule, still followed in the majority of jurisdictions, is that unless a lease involves the rental of a furnished dwelling for a very short duration,[1] there is no implied warranty that the rented premises are habitable and generally fit for the tenant to live in.[2] The rule has been expressly predicated on the familiar doctrine of caveat emptor[3] and implicitly predicated on a number of agrarian leasehold assumptions.[4] Commentators have vigorously attacked the rule and have urged its replacement by an implied warranty of habitability.[5] Quite recently, a rapidly increasing number of jurisdictions have re-examined this much-disliked common-law rule and have overturned it in favor of one

1. The leading decision setting forth this short-term, furnished dwelling exception is Ingalls v. Hobbs, 156 Mass. 348, 31 N.E. 286 (1892). The *Ingalls* court reasoned that because the tenant is renting the furnished dwelling for only a very short duration, both parties reasonably contemplate that the tenant will expect a dwelling which he will not have to spend time repairing.
2. 2 R. POWELL, LAW OF REAL PROPERTY ¶ 233 (1973 ed.).
3. *See e.g.*, Bennett v. Sullivan, 100 Me. 118, 60 A. 886 (1905).
4. First, the land and not the dwelling was considered by the agrarian tenant to be the most important part of the leasehold. Second, the common-law tenant was a "jack-of-all-trades" farmer who could easily make the necessary repairs himself. Third, placing the duty of repair on the shoulders of the agrarian tenant was justified because he usually remained on one piece of land his entire life. Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); Lemle v. Breeden, 51 Hawaii 426, 462 P.2d 470 (1969).
5. *See* Quinn & Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past With Guidelines for the Future*, 38 FORDHAM L. REV. 225 (1969); Skillern, *Implied Warranties in Leases: The Need for Change*, 44 DENVER L.J. 387 (1967); Comment, *Implied Warranty of Habitability: An Incipient Trend in the Law of Landlord-Tenant?*, 40 FORDHAM L. REV. 123 (1971).

which provides that in every urban residential lease agreement there is an implied warranty that the rented premises are habitable.[6]

Because the implied warranty of habitability is in its initial stages of development, its parameters have yet to be determined by the courts. In *Foisy v. Wyman*,[7] the Washington Supreme Court joined this growing group of minority jurisdictions in overturning its common-law rule and implying a warranty of habitability in lease agreements. *Foisy* raises an important new aspect of this developing doctrine. Specifically, does a tenant waive the protection of an implied warranty of habitability where he accepts premises

6. Eleven jurisdictions have fully endorsed the implied warranty of habitability: Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); Green v. Superior Court, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); Steele v. Latimer, — Kan. —, 521 P.2d 304 (1974); Foisy v. Wyman, 83 Wash. 2d 22, 515 P.2d 160 (1973); Boston Housing Authority v. Hemmingway, 293 N.E.2d 831 (Mass. 1973); King v. Moorehead, 495 S.W.2d 65 (Mo. App. 1973); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 (1970); Lemle v. Breeden, 51 Hawaii 426, 462 P.2d 470 (1969).

It should be noted that the courts are far from uniform in their rationale for implying the warranty of habitability. Some courts have rested the warranty entirely upon a change in the basic assumptions underlying the common law rule, while others have reasoned that it is implied from the provisions of local housing codes. Still others have predicated the implied warranty on both of these grounds.

While Nebraska has not judicially created an implied warranty of habitability, the overall effect of the Uniform Residential Landlord-Tenant Act which was recently adopted in Nebraska, L.B. 293, [1974] Neb. Laws 2d Sess. 88, appears to be that a landlord does impliedly warrant to his tenant that the rented premises are habitable. This conclusion is based on a total reading of the act. Section 7 of the act expressly provides that its provisions shall determine the rights and obligations of every party to a rental agreement. Section 19 of the act, in particular, requires that every tenant provide and maintain habitable premises for his tenant. Finally, under section 25 of the act if the landlord fails to provide and maintain habitable premises for his tenant, the tenant has three remedies at his disposal: (1) in certain circumstances he can terminate the lease if the landlord fails to repair the defects, (2) he can sue for damages, measured by the difference in the rent paid and the actual fair market value of the defective premises or (3) he can obtain injunctive relief against the landlord for any non-compliance. This, in substance, is nothing less than an implied warranty of habitability. It is important to note that if the act does, by its terms, create an implied warranty of habitability, then it apparently cannot be waived by the tenant. Section 15 would appear to prohibit such a waiver.

7. 43 Wash. 2d 22, 515 P.2d 160 (1973).

containing substantial patent defects, and where he does so in return for a reduced monthly rent payment? This note will examine this issue and the court's treatment of it.

The facts of the case were partially disputed. The landlord claimed the tenant was possessing the single family dwelling under an oral six month lease and had an option to purchase the house. The tenant claimed he was a purchaser and was not renting the house as the landlord claimed. The court resolved the issue in favor of the landlord, holding that there was a landlord-tenant relationship created and not that of vendor-vendee.[8] It was uncontroverted that there were a number of major defects on the premises, including a lack of heat, no hot water tank, broken windows, a broken door, a defective and leaking toilet, and termites in the basement. It was also admitted that when the tenant accepted the premises, he was aware of some but not all of these defects. Further, although the landlord originally wanted a rent payment of $87 per month, the tenant offered to pay $50 per month, and the landlord accepted this offer.

During the six month term, the tenant paid the landlord only $95, leaving $205 still owing. The tenant remained in possession after the expiration of the six month term, and the landlord served him with a notice to pay the rent or vacate the premises. When the tenant refused to do either, the landlord brought an unlawful detainer action, and the tenant defended by asserting that the landlord had breached an implied warranty of habitability. The trial court held for the landlord and refused to allow the tenant to offer evidence supporting his implied warranty of habitability defense. In a 6-3 decision, the Washington Supreme Court reversed, holding that there is to be a warranty of habitability implied into urban residential leases and that a breach of that warranty can be raised by a tenant in an unlawful detainer action.[9] Moreover, the court

8. Since the court dealt with Wyman strictly as a tenant and not as a purchaser, this note will analyze the case entirely from that perspective. For a discussion of the emerging doctrine of implied warranty of fitness in the vendor-vendee situation, see Roberts, *The Case of the Unwary Home Buyer: The Housing Merchant Did It*, 52 CORNELL L.Q. 835 (1967).

9. In an unlawful detainer action, the sole issue before the court is who is entitled to possession of the premises. Therefore, the only defenses permitted to be raised by a tenant are those relating solely to the right of possession. Since under common law the covenants in a lease are viewed as being independent, a landlord's breach of the implied warranty of habitability would not be relevant to the issue of possession because the tenant's duty to pay rent is in no way dependent on the landlord's duty to provide habitable premises. Hence, the breach

ruled that regardless of the tenant's acceptance of the premises containing patent defects and despite his insistence that the monthly rent payments be reduced from $87 to $50, he could not be deemed to have waived the protection of the implied warranty and could assert its breach as a defense to the landlord's action.[10]

Set against the background of other decisions in this area, as well as the treatment given the warranties implied under the Uniform Commercial Code, it may appear that the *Foisy* court has gone too far in affording the instant tenant the protection of the implied warranty. Prior to *Foisy*, the decisions in this area framed the implied warranty largely as a warranty against *latent* defects only.[11] Thus, if a dwelling contains patent defects but a tenant nonetheless accepts it, these decisions indicate that the tenant has waived the protection of the implied warranty.[12] Such an approach to the im-

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could not be raised as a defense. However, the modern view, followed by *Foisy*, is that a lease is essentially a contractual relationship embodying covenants which are mutually dependent and that a breach of a covenant by the landlord may be raised by the tenant in an unlawful detainer action, so long as it otherwise relates to the issue of possession. *Foisy* ruled that a breach of the implied warranty of habitability does directly relate to possession and may be raised in an unlawful detainer action. This same conclusion was promulgated in Green v. City of San Francisco, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974).

10. The remedy afforded the tenant by the *Foisy* court for a breach of the implied warranty was an extinguishment of the monthly rent to that sum representing the actual value of the leased premises. But even with this remedy, the instant case demonstrates that a tenant acts at his peril by withholding rent for what he believes to be uninhabitable premises if the landlord brings an unlawful detainer action. If the court determines that the rented premises are even partially habitable, and thus of some value, but the tenant has failed to pay any rent or has paid rent in an amount less than the ascertained value of the premises, then the landlord will prevail in the unlawful detainer action. In the instant case, the court remanded the case to the trial court with directions that the landlord should prevail in his unlawful detainer action if the trial court should find the leased premises partially habitable and of a value in excess of the rent paid in by the tenant.

11. *See* Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); Lemle v. Breeden, 51 Hawaii 426, 462 P.2d 470 (1969). However, Boston Housing Authority v. Hemingway, 293 N.E.2d 831 (Mass. 1973), Mease v. Fox, 200 N.W.2d 791 (Iowa 1972), and Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972) can be read as creating a warranty against latent defects as well as patent defects if the patent defects are also housing code violations. *See also* Comment, *Tenant Protection in Iowa—Mease v. Fox and the Implied Warranty of Habitability*, 58 IOWA L. REV. 656 (1973).

12. The rationale for holding that a waiver has occurred where the tenant accepts patently defective premises appears to be predicated on the

plied warranty of habitability parallels the treatment of the warranties implied under the Uniform Commercial Code. Under the Code,[13] if a buyer inspects goods containing patent defects, but accepts the defective goods, he loses the protection of any implied warranty with regard to the defects.[14] It is submitted, however, that a closer analysis of *Foisy* reveals that some parts of the court's opinion are indeed meritorious.

The court predicated its "no-waiver" holding on three alternative grounds. First, the court held that an analysis of the Washington housing statute indicated it would be contrary to public policy for a tenant to waive the implied warranty and thus relieve his landlord of his statutory duty to provide tenants with habitable premises. The court reasoned that the housing statute expressly obligated every landlord to provide his tenants with habitable premises.[15] In addition, the landlord is obligated under the statute to provide habitable premises regardless of any agreements between himself and his tenant.[16] Therefore, to allow a landlord to

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belief that responsible persons ought to be held liable for their irresponsible acts. This is the view taken by the dissent in *Foisy*:

> 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.

83 Wash. 2d at —, 515 P.2d at 169.

13. UNIFORM COMMERCIAL CODE § 2-316(3)(b) provides:

> (3) Notwithstanding subsection (2)
>
> . . . .
>
> (b) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

14. Richards Mfg. Co. v. Gamel, 5 Wash. App. 549, 489 P.2d 366 (1971); Fletcher Co. v. Melroe Mfg. Co., 238 So. 2d 142 (Fla. App. 1970); Scotco, Inc. v. Dormeyer Indus., 402 F.2d 336 (7th Cir. 1968).

15. WASH. REV. CODE ANN. § 59.18.060 (1973) provides in part: The landlord will at all times during the tenancy keep the premises fit for human habitation . . . .

16. WASH. REV. CODE ANN. § 59.18.100(6) (1973) provides:

> 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.

fashion a private agreement removing his duty to provide habitable premises would be to contradict the terms and purpose of the statute.[17]

This rationale is sound and has been proffered by another court.[18] Moreover, the court's reasoning is supported by analogous cases involving an employee's attempted waiver of industrial safety statutes specifically imposing a duty on the employer.[19]

The court could have justified its "no-waiver" holding by relying solely on this construction of the state housing statute. However, the court further relied on two other independent grounds: (1) that the purpose of the implied warranty and public policy prevent a tenant such as Wyman from waiving the warranty and (2) that the general societal ills created or aggravated by sub-standard housing prohibit such a waiver.

The first additional independent justification offered by the court for its "no-waiver" holding is that as between the two contracting parties, the purpose of the implied warranty as well as public policy prohibit a landlord from bargaining with his tenant to accept patently sub-standard housing, even at a reduced monthly rental.[20] In view of the facts presented by *Foisy*, this reasoning is, in part, questionable.

The analysis of this basis for the court's decision is aided by viewing separately the two aspects of accepting patently defective housing and of bargaining for a rental reduction. Focusing solely

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One of the obligations specifically imposed on the landlord under the chapter is that he must, at all times, keep the rented premises fit for human habitation. *See* note 15 *supra*.

17. Arguably, the Washington statute set forth in note 16 *supra*, which the court relied upon in its analysis, can be read as expressly *allowing* a landlord to remove by contract any duty of repair he might have with respect to his tenants. The statute can fairly be construed to mean that a private disclaimer will be binding between the parties, but that a code violation will always subject the landlord to penal sanctions through municipal enforcement.

18. *See* Javins v. First Nat'l Realty Co., 428 F.2d 1071 (D.C. Cir. 1970). The language of the housing regulation involved in the *Javins* decision is perhaps more susceptible of such a "no waiver" construction. It provided that "[n]o person shall rent or offer to rent any habitation, or the furnishings thereof, unless such habitation or its furnishings are in a clean, safe and sanitary condition, in repair and free from rodents or vermin." *Id.* at 1081.

19. *See* Narramore v. Cleveland, C., C. & St. L. Ry., 96 F. 298 (6th Cir. 1899). This analogy was emphasized by the *Javins* court to support its holding that the statutory duty of providing habitable premises cannot be waived.

20. 83 Wash. 2d at 22, 515 P.2d at 164.

on a tenant's acceptance of patently defective housing, the court's rationale is sound. One of the fundamental reasons for judicially creating an implied warranty of habitability is that when a lower-income urban tenant bargains with a landlord, the tenant is in a grossly unequal position and cannot bargain for his own protection.[21] The implied warranty of habitability is used to bridge the gap between their respective bargaining positions and to imply into the lease that protection which the tenant would normally have expressly demanded from the landlord had there truly been a situation with equal bargaining power. In view of this basic reason for the emergence of the warranty, it appears that even though the housing defects are patent, if there is a gross inequality in the bargaining power of the two parties, then a tenant's acceptance of the patently defective premises should not constitute a "waiver" of the implied warranty.[22] If a tenant had the requisite bargaining power, he would always demand that the landlord repair the premises before he would accept them.[23] Moreover, there is persuasive authority for the proposition that courts should and will interfere with the oppressive terms contained in a contract executed between two private parties where the oppressed party is in a grossly inferior bargaining position or where the transaction is so one-sided as to be regarded as unconscionable.[24]

Turning to the rental reduction aspect of this basis for the decision, the court's reasoning becomes questionable. If the court is saying that it will not find a waiver of the implied warranty where there is unequal bargaining power and the landlord gives the tenant only a *nominal* reduction in rent (*i.e.*, an amount not adequate to allow the tenant actually to make the necessary repairs himself), then its conclusion is sound. The essential goal sought to be

21. *See* Green v. Superior Court, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); Javins v. First Nat'l Realty Co., 428 F.2d 1071 (D.C. Cir. 1970).

22. Indeed, "waiver" is defined as the *voluntary* relinquishment of a known right. Farmers State Bank v. Edison Non-Stock Co-op Ass'n, 190 Neb. 789, 212 N.W.2d 625 (1973). There is no element of voluntariness where the tenant is in a grossly unequal bargaining position with his landlord.

23. It is somewhat surprising that the court referred to Wyman (the tenant) in terms of being a "disadvantaged tenant," implying that he was, in fact, in a grossly inferior bargaining position with Foisy (his landlord). The facts of the case indicate that Wyman was not in an inferior bargaining position, for he successfully negotiated a reduction in the monthly rent from $87 to $50 a month.

24. *See* Jones v. Star Credit Corp., 59 Misc. 2d 189, 298 N.Y.S.2d 264 (1969); Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960).

effectuated by the use of an implied warranty is to place the premises in a fit condition for the tenant and his family. Hence, even if there is a reduction in rent, if the reduction does not actually give the tenant the economic ability to repair the defects, then this goal is not being reached and the tenant should not be deemed to have waived the implied warranty. In such a case, the rent reduction serves only partially to appease the tenant for living in such misery.

If, on the other hand, the court is saying that there will be no waiver even in situations where the landlord *substantially* reduces the monthly rent, and thus provides the tenant with the economic ability to make the necessary repairs, then the court's holding is unsound. If the rent reduction will, in fact, allow the tenant to repair the defects, then the purpose of the warranty is being attained and the tenant should be barred from subsequently suing on any implied warranty of habitability or even using it as a defense in an unlawful detainer action brought by the landlord. The tenant would have had an opportunity to make the premises habitable and should be held accountable for his own failure to repair.[25] Such an approach is also desirable because if the repairs come indirectly out of the tenant's own pocket, he may be more likely to respect the landlord's property and not destroy it.

The second independent ground for the court's determination that the tenant had not waived the implied warranty centered on the societal interest affected by the rental of sub-standard housing. The court reasoned that when a sub-standard dwelling is rented to a tenant, *society* is harmed because the community is continuously exposed to the tenant, who must live in unhealthy conditions and who may become a carrier of disease contracted during his occupancy of the premises. Moreover, the court noted that substandard housing conditions are at least a contributing cause of juvenile delinquency.[26] As a result, even if a tenant intends to waive his implied warranty, and even if he accepts the premises at a reduced rent, society, in general, is nonetheless harmed by this "pri-

25. Such an approach would admittedly require the court to make a number of "full-blown" factual determinations even where the landlord brings a summary unlawful detainer action. However, while an unlawful detainer action is intended to be a summary procedure whereby the narrow issue of the right to possession can be quickly determined, the implied warranty of habitability and its waiver by the tenant do relate directly to the issue of possession, and the tenant should be permitted to raise them. Because these factual determinations relate directly to the issue of whether a waiver has taken place, they should be allowed into evidence.

26. 83 Wash. 2d at —, 515 P.2d at 164-65.

vate" transaction. As a matter of public policy, therefore, no tenant will be able to waive the implied warranty of habitability. A tenant will thus be able to sue on the implied warranty or use it as a defense and thereby force the landlord to repair the premises, regardless of what the lease provides.

The court implicitly focuses on the two fundamental competing policy considerations. On one hand, a traditional tenet of Anglo-American law is that a progressive society has an interest in allowing parties to contract privately and mold their respective rights and duties without judicial interference.[27] On the other hand, where the provisions of a private transaction detrimentally effect the public good, then society, through the judicial system, has a right to modify or void private contractual terms to protect the community's interest.[28] The *Foisy* court found that the practice of renting uninhabitable premises does detrimentally affect the public good and therefore justifies judicial intervention.

Two problems arise with the court's rationale. First, *Foisy* stands for the proposition that courts can and should step in and judicially modify or avoid these private agreements where *some* degree of public detriment can be shown, then it is indeed setting a startling precedent. It is submitted that courts should interfere with private agreements only where the public injury is both substantial and sharply defined, and that *Foisy* must be read in this context. It is also submitted that in the urban rental situation, this type of societal injury does exist because of the renting of tumbledown houses, and judicial interference with these private lease agreements is justified.

Second, if a tenant agrees to rent defective premises in return for a substantial reduction in monthly rent and further expressly promises in the lease to use the reduction to repair the defective premises, then it appears that no injury accrues to society and the tenant should not be able to sue on the implied warranty of habitability or be able to use it as a defense. On the contrary, such a lease arrangement only serves to effectuate the ultimate societal goal in this difficult area—a minimum standard of decent housing.[29]

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27. *See* Williston, *Freedom to Contract*, 6 CORNELL L.Q. 365 (1921).

28. Courts keep in mind the principle that the best interests of society demand that persons should not be unnecessarily restricted in their freedom to contract. But they do not hesitate to declare void as against public policy contractual provisions which clearly tend to the injury of the public in some way.

Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 403-04, 161 A.2d 69, 95 (1960).

29. The importance of having the tenant expressly covenant in the lease

CONCLUSION

The urban landlord-tenant situation presents a multitude of very difficult legal and practical problems. The *Foisy* court should be complimented for stepping forward and attempting to make some much-needed fresh judicial inroads into solving some of these problems.[30] The court should, however, be criticized for a less than complete analysis of the three alternative approaches it proffered regarding the waiver of an implied warranty of habitability. Although the court adequately covered the statutory approach to the waiver issue, it only summarily handled the other two alternative approaches. This criticism is especially well-leveled when one realizes that *Foisy* will undoubtedly be cited for the bold proposition that in no event can a tenant waive the implied warranty of habitability owed to him by his landlord. Further, it is submitted that the court should have fashioned a case by case approach to the waiver issue, weighing factors such as (1) the equality in bargaining power between the two parties, (2) whether the monthly rent reduction (if any) is substantial enough to allow the tenant to make the necessary repairs himself and (3) whether the tenant expressly

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that the specified rent reduction will be used to repair the premises is that it affords the landlord the ability to enforce the repair agreement and thus bring the premises up to a minimum level of habitability.

30. It is submitted that judicial inroads into the urban housing problem are presently needed in many instances because while traditional housing codes have been enacted to solve the problems of ensuring a minimum level of decent housing by requiring the owner-landlord to make repairs, experience has demonstrated that these codes have been less than successful. First, compliance with these traditional codes has been predicated largely on criminal sanctions and has not afforded the tenant a civil right of action to enforce the codes. These criminal sanctions, however, have simply not been enforced on a major scale by local authorities. Second, the volume of housing code complaints, coupled with the substantial amount of administrative red tape involved, have added to the lack of enforcement. Gribetz & Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254 (1966). Quinn & Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past With Guidelines For the Future*, 38 FORDHAM L. REV. 225 (1969).

With the enactment of modern landlord-tenant acts, such as the Uniform Residential Landlord-Tenant Act recently adopted in Nebraska, the necessity for judicial solutions to these problems is greatly lessened if not eliminated. This result is largely due to the fact that under the Uniform Act, the tenant himself plays a major role in the enforcement of the housing code. Thus, its provisions will actually be implemented to a much greater degree.

promises to make the necessary repairs in return for the rent reduction. While a case by case approach to the waiver issue appears to be the most equitable and reasonable, it must be noted that such an approach does not engender a very high degree of predictability. A landlord is essentially kept guessing as to what degree of a reduction in rent will be deemed substantial enough to equip his tenant with the economic ability to repair the defects and thus preclude the tenant from subsequently asserting an implied warranty as the basis of a suit against the landlord, or using the warranty as a defense in an unlawful detainer action for non-payment of rent. A tenant is also put in a precarious position should he decide to withhold rent in an amount sufficient to enable him to make necessary repairs. If the tenant withholds an amount which would cause his rent payment to fall below the market value of the premises, he would be subject to an eviction in unlawful detainer action.[31]

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31. For a discussion of this problem in the context of the *Foisy* case, see note 8 *supra*.