Tenant's Remedies in the District of Columbia: New Hope for Reform

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COMMENT/Tenants’ Remedies in the District of Columbia: New Hope for Reform

Introduction

Today, after more than three decades of fragmented and grossly under-funded Federal housing programs, decent housing remains a chronic problem for the disadvantaged urban household. Fifty-six percent of the country's nonwhite families live in central cities today, and of these, nearly two-thirds live in neighborhoods marked by substandard housing and general urban blight. For these citizens, condemned by segregation and poverty to live in the decaying slums of our central cities, the goal of a decent home and suitable environment is as far distant as ever.¹

Today, less than three years after sections of the legal profession began a concentrated assault on ancient precedents in the area of landlord and tenant law, much of what lawyers think of as progress has occurred. In 1966, when Robert S. Schoshinski published Remedies of the Indigent Tenant: Proposal for Change,² the District of Columbia faced crisis in two areas: total frustration of the slum dweller on the social front³ and total absence of suitable civil remedies on the legal front.⁴ As a result of the efforts of the Neighborhood Legal Services Program, enough of a change has taken place in the District of Columbia to make possible the beginnings of a critical evaluation of Professor Schoshinski's proposals as they have affected the lawyer and his slum-dwelling client.

The approach of Professor Schoshinski's article was that of a scatter-gun, characterized by a wide-ranging search of all conceivable legal arguments, a cataloging and conglomerating of theories without specific emphasis on the usefulness of the resulting remedies to the low-income tenant or the suitability of the theories to this jurisdiction's legal precedents. At the time of the article, a catalogue was what the legal profession needed; now, when certain theories have been tested in the courts, a study is needed that can be evaluative as well as additive.

1. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 257 (March 1, 1968).
2. 54 GEO. L.J. 519 (1966).
Clearly, the changes that must take place in the decisions of the District of Columbia courts are revolutionary ones. For the slum-dweller in need of immediate relief, these changes must occur at the trial level. Unfortunately, many of the lower court judges who must implement this revolution aimed at public values of courts are reluctant to give effect to even creeping reform. Time after time, the arguments based on Professor Schoshinski's theories have been summarily rejected without even an appellate brief to commemorate their passing. Only one argument advanced by Professor Schoshinski has met with approval by any trial judge; i.e., the illegal bargain argument based on violations of the Housing Regulations. The reasons for its singular acceptance will be discussed below.

For any change to occur at the trial level before the long process of appeal and re-appeal, it must appear as unrevolutionary and consistent as possible with prior case law in the given jurisdiction. At the same time, arguments must not be made which would lead to remedies so ineffectual and useless to low-income tenants that no real change will be made at all. These two state-


The striking resistance to change of certain judges of the District of Columbia Court of General Sessions can be seen in the comments of a trial court judge on unconscionability. In Jones v. Sheetz, 242 A.2d 208 (D.C. Mun. Ct. App. 1968), the landlord brought an action to regain possession of leased premises. The tenant had completed three years of law school, worked as a tax consultant, and occupied the premises for more than four years before claiming the rental agreement was oppressive. Although these circumstances were such that a trial judge's ruling that the lease agreement was conscionable probably would not be reversed on appeal, the trial judge retorted the following comments on unconscionability, a defense to contract that has been statutorily as well as judicially effective in the District since 1965. See D.C. Code Ann. § 28-2-302 (1967); Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965).

After first calling questions concerning commercial setting "tommyrot," the trial judge continued:

Don't give me all that liberal garbage about how somebody is in an unfair bargaining position just because they happen to do business with a businessman. If you start into that sort of thing, then you are going to have some government watchdog sitting here and arbitrating every possible agreement. . . . [I]f . . . [a contract] is unconscionable because one person happens to have a little more commercial experience than another or because somebody has a little more education than somebody else . . . [then] we have . . . government arbitrators sitting in and deciding on every possible sort of transaction that people get into. . . . The minute you do that, you have absolutely destroyed the free society and you have brought about what is nothing more than "big brother government . . . ."

Id., Brief for Appellant at 39, citing Trial Transcript at 249-51.

The trial judge gave as an example of minimum requirements of unconscionability a lease in which "a tenant is paying three times as much rent as he ought to be paying, he is also supposed to build a whole new house in back as part of the rent." Ibid.

6. Adams v. Lancaster, supra note 5.
ments contain the kernel of the criteria by which available or proposed remedies will be judged.

Judicial Remedies for Housing Regulations Violations

Underlying any discussion of the adequacy of remedies available to the low-income tenant for the landlord's failure to maintain habitability is the assumption that the tenant has a recognizable right of action. At common law, the lessor did not impliedly warrant premises to be tenantable or suitable.7 Absent a covenant in the lease, no duty was imposed on the landlord to make ordinary repairs or to maintain habitability.8 A lessor's promise to make repairs was viewed merely as an independent covenant, the breach of which would not excuse a tenant from his obligation to pay rent.9 To alleviate these harsh common law principles, it has been proposed that housing and building codes provide a statutory basis to impose an implied contractual obligation on landlords.10 More specifically, Professor Schoshinski has suggested that the District of Columbia Housing Regulations11 should suffice to imply a warranty of habitability in modern leases and impose a duty on lessors to maintain and repair the premises.12 Constructive eviction or an action for damages

11. HOUSING REGULATIONS OF THE DISTRICT OF COLUMBIA (1967) [hereinafter cited as HOUSING REG.]. These regulations, established and authorized by District of Columbia Commissioners' Order No. 55-1503, August 11, 1955, provide in part:
   Section 1201—The owner of a building used for residential purposes shall provide such building with adequate facilities for heating, ventilating and lighting the same . . . .
   Section 2401—The owner or licensee of each residential building shall provide and maintain the facilities, utilities and services required by this part . . . .
   Section 2501—Every premises accommodating one or more habitations shall be maintained and kept in repair so as to provide decent living accommodations for the occupants . . . .
12. Schoshinski, supra note 4, at 523-27, 529, 537. The District of Columbia Court of Appeals recently negated such a suggestion in Saunders v. First Nat'l Realty Corp., Nos. 4119-22 (D.C. Mun. Ct. App. Sept. 23, 1968). Chief Judge Hood stated: "We find nothing in the Housing Regulations expressly or necessarily implying that a contractual duty is imposed on the landlords to comply with the Regulations." Id. at 4. In support of its conclusion, the court noted that the Housing Regulations provide penal sanctions as well as authorizing the suspension or revocation of a landlord's housing license for violation of the Regulations. In addition, the court observed that the general language found throughout the Regulations, such as "good repair," "normal demands," "adequate," etc., indicates that enforcement of the Regulations is better left to the judgment and discretion of trained personnel authorized to administer them. Finally, the court declared
would be available to tenants upon a landlord's failure to meet the statutory standards of habitability.

**Constructive Eviction and Action for Damages**

These remedies have existed since 1926 in the District of Columbia. In Pinching v. Wurdeman, the landlord failed to make repairs as covenanted in the lease. The tenant abandoned the premises while part of the lease term still remained. The United States Court of Appeals for the District of Columbia Circuit, in granting the landlord's suit for rent due for the remainder of the term, listed the remedies available to the tenant; he could either abandon the premises within a reasonable time of their becoming uninhabitable or file an action for damages for breach of covenant. Forty-two years later, these remedies have become antiquated and inadequate.

Constructive eviction requires abandonment of the uninhabitable dwelling and a move to new premises. Where a substantial minority—as much as forty-one percent of the residences available to low-income tenants in the District of Columbia are dilapidated, moving from one hovel to what will probably be another hovel is no remedy. Moreover, in the seller's market of the District of Columbia hovels of the requisite price and size are difficult to find. The action for damages can be raised either as a recoupment or counterclaim to a suit for rent by the landlord, or in a separate suit by a rent-paying tenant. Under the former, the tenant will be evicted for non-payment of rent and will be in much the same position as if he had been constructively evicted, except that he can collect damages which are off-set against the rent due. Under the latter, the tenant will likely be designated either a tenant at sufferance or a periodic tenant, either of which is subject to eviction by a vexa-

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that a statute in derogation of the common law is not to be construed as meaning something other than that which is fairly expressed.


15. Lowe, *supra* note 3, at 152-53. A release by the Washington Planning and Housing Association in January, 1968, indicates that Washington is between 40,000 and 50,000 housing units short of the amount it needs to provide decent quarters for its 252,000 households.

16. Seidenberg v. Burka, 106 A.2d 499 (D.C. Mun. Ct. App. 1954); Mitchell v. David, 51 A.2d 375 (D.C. Mun. Ct. App. 1947). **District of Columbia Court of General Sessions (Landlord & Tenant Branch)** R. 4(c) provides: "In suits in this branch for recovery of possession of property in which the basis of recovery of possession is nonpayment of rent, tenants may set up an equitable defense or claim by way of recoupment or set-off in an amount equal to the rent claim. No counterclaim may be filed unless plaintiff asks for money judgment for rent."

tious landlord within thirty days, thus confronting him with the difficulty of finding a new residence. Even if the tenant is one of the minority of low-income tenants who have leases for a term, he still must determine whether such a suit will produce damages great enough to justify itself.

The tenant's damages can be measured as the difference between the total of all rents paid to the landlord for the particular apartment during the time it has been in violation of the District of Columbia Housing Regulations, and the worth of the unsuitable premises on the rental market during this period. One method of determining the latter is by a quality comparison with similar apartments in the market area. Even if the tenant has the resources to establish, presumably by expert testimony, the rental-market worth of any given apartment in the District of Columbia, the rental-market worth of an apartment with Housing Regulations violations on the high-demand low-supply market may be such that the damages are less than the sizable expense of hiring an expert appraiser. That the rental-market worth of inadequate housing is often only slightly less than the rent charged, even though the rent for inadequate housing is as high as that charged for adequate housing, is not surprising in view of the landlord's oft-bemoaned and sometimes documented bare minimum of profit. Such an action for damages, even if it reduces the amount of rent by as much as twenty-five percent, would be fruitful only if enough similarly situated tenants are involved to make the cost of hiring the expert appraiser reasonably consonant with the returns.

**Constructive Eviction without Abandonment**

Professor Schoshinski has also recommended that the common law constructive eviction requirement of abandonment within a reasonable time be discarded in light of the contemporary housing situation. The resultant remedy would be genuinely useful. It would enable the tenant to avoid the hardships of constructive eviction while taking advantage of its benefit—termination of the rental obligation. The difficulty with this legal theory is that the District of Columbia courts have not accepted it. The theory is based upon two New York cases which in turn are based upon a public policy declaration of a kind and vigor unique to New York City. The two cases, John-

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18. D.C. Code Ann. § 45-902 (1968): “A tenancy from month to month, or from quarter to quarter, may be terminated by a thirty days’ notice in writing from the landlord to the tenant to quit . . .” D.C. Code Ann. § 45-903 (1968): “A tenancy at will may be terminated by thirty days' notice in writing by either landlord or tenant.” *But see* Edwards v. Habib, No. 20883 (D.C. Cir. May 17, 1968).


20. Two plausible reasons for the near approximation between actual rents charged and market value of slum apartments are: 1) the scarcity of land in the District driving up the worth of the land itself; and 2) the scarcity of low-cost apartments driving up the market worth of the available apartments.

son v. Pemberton\textsuperscript{22} and Majen Realty Corp. v. Glotzer,\textsuperscript{23} have been bypassed by New York appellate courts.\textsuperscript{24} The rationale of the cases is based upon judicial notice of a housing shortage; the judicial notice arises not from socio-logical evidence of the shortage, such as is available in the District of Columbia, but from executive-legislative notice of the shortage in New York’s rent control legislation.\textsuperscript{25}

The abandonment requirement is premised on the assumption that if the dwelling was in fact uninhabitable, the tenant would not have remained in possession but would have moved elsewhere. The New York cases recognized that once this assumption is undermined by evidence, such as remedial legislation, of a housing shortage, the reason for the requirement disappears.\textsuperscript{26} Majen permits only two grounds for the invocation of the constructive eviction without abandonment theory: “no living accommodations available elsewhere or . . . such a scarcity of them that impels the legislature to declare a public emergency . . .”\textsuperscript{27} (Emphasis added.)

The housing shortage in the District of Columbia has not reached such a severe state that there is no other habitation available to a tenant; housing is merely scarce and dilapidated. The legislation and regulations for the District of Columbia, moreover, do not even bear upon the scarcity but only upon the quality of housing. The Commissioners’ preamble to the Housing Regulations lists an entire paragraph of conditions which are “deleterious to the [public] health, safety, welfare, and morals”;\textsuperscript{28} scarcity of housing is not one of these. The policy declaration of Congress in the D.C. Code is similarly concerned with “blighted” and “substandard” housing,\textsuperscript{29} not with scarce housing; on the contrary, it is the abundance of slums that appears to cause congressional and administrative worries.

\textit{Injunctive Relief Based on Nuisance}

The injunctive remedy for nuisances can be invoked only in the absence of an adequate remedy at law. Professor Schoshinski indicates that both owners and tenants have been permitted injunctive relief against nuisances outside

\begin{itemize}
\item \textsuperscript{22} 197 Misc. 739, 97 N.Y.S.2d 153 (Mun. Ct. 1950).
\item \textsuperscript{23} 61 N.Y.S.2d 195 (Mun. Ct. 1946).
\item \textsuperscript{25} See \textit{Rent Regulation for Housing in New York City Defense Rental Area} (1944); 1949 \textit{Federal Housing Regulation} (N.Y.C.) § 825.2. Rent control legislation was adopted in the District of Columbia during World War II, but was abandoned in 1953 when Congress believed the shortage had abated below emergency levels. \textit{See} D.C. \textit{Code Ann.} § 45-1601 (1968).
\item \textsuperscript{26} Johnson v. Pemberton, \textit{supra} note 22, at 743, 97 N.Y.S.2d at 157.
\item \textsuperscript{27} Majen Realty Corp. v. Glotzer, \textit{supra} note 23, at 197.
\item \textsuperscript{28} \textit{Housing Reg.} § 2101 (1967).
\item \textsuperscript{29} D.C. \textit{Code Ann.} § 5-701 (1966).
\end{itemize}
the premises, while only owners have been granted injunctive relief against nuisances such as howling dogs or wandering cattle coming onto the premises. The problems of tenants for which Schoshinski seeks equitable relief are different from these; generally, they come under the heading of housing code violations.

District of Columbia courts have defined nuisance as “‘anything that works or causes injury, damage, hurt, inconvenience, annoyance, or discomfort to one in the legitimate enjoyment of his reasonable rights of person or property . . .’” Professor Schoshinski argues that a landlord who allows housing conditions to fall below statutory standards causes “an unreasonable interference with the tenant's interest in the use and enjoyment of the property . . . [and] disturbance to the comfort or convenience of the tenant.” Even if this argument is accepted, tenants do have legal remedies against such problems—constructive eviction or a suit for damages for breach of an implied covenant. Equitable relief would seem to be precluded.

The adequacy of these legal remedies can be questioned. The grounds on which they can be questioned, however, do not seem sufficient to justify equitable relief. Constructive eviction can be labeled inadequate because of the lack of suitable, habitable premises available to displaced low-income tenants, but without legislative-executive recognition of this shortage it is unlikely equitable relief will be granted. A damages award is usually inadequate due to the near accord of actual rent and rental-market worth of substandard housing in the District of Columbia. If recoverable financial damages are minimal, it might be concluded that little actual damage was done, so an equitable remedy may be deemed inappropriate. Although both of these difficulties could be overcome by a judge sympathetic to sociological evidence of insufficient suitable housing and to evidence of sociological and psychological damage immeasurable in dollars and cents, the fact remains that the same trial judge who considers such evidence in cases at law would be evaluating it in equity suits.

30. Schoshinski, supra note 4, at 539.
32. Schoshinski, supra note 4, at 540.
33. In Edwards v. Habib, supra note 18, discussed infra, United States Court of Appeals Judge Wright noted that "'[i]n trying to effect the will of Congress and as a court of equity we have the responsibility to consider the social context in which our decisions will have operational effect,'" and thus held the District of Columbia's eviction statute, quoted supra note 18, to be ineffectual where the landlord brings an eviction action in retaliation for the tenant's reporting housing code violations. One of several factors considered by the court in striking a balance between the housing regulations and the eviction statute was "the appalling condition and shortage of housing in Washington . . . ." Id. at 23. But notice taken of sociological facts in seeking the intent of
Defense of Illegal Contract

Since the illegal contract defense is the only one of Professor Schoshinski's suggested grounds which has been accepted by a trial court, a detailed analysis of the argument and the reasons for its acceptance is in order. The illegal-bargain argument can be asserted in several distinct types of cases involving a dwelling which is in violation of the Housing Regulations or Certificate of Occupancy requirements. The landlord may be suing for rent due. The tenant may be suing to recover a deposit or pre-paid rent when no actual use has been made of the premises. The tenant may be suing to recover all consideration given in payment for actual use. The violation may have arisen before or after the beginning of the tenancy.

As a condition precedent to making this argument in any of these cases, it must be found that a contract to rent premises which are in violation of the Housing Regulations is in fact an illegal bargain. There is every reason to void such leases. The Housing Regulations embody a vital public policy, designed to protect a particular class of people in a situation where public enforcement has proved inadequate.

This public policy has been declared by both the D.C. Commissioners and the Congress. In their preamble to the Housing Regulations, the Commissioners state:

Congress and construing a statute is not the equivalent of taking judicial notice to determine the adequacy of a legal remedy.

Professor Schoshinski also proposes an equitable "constructive eviction" remedy which is, in essence, constructive eviction without abandonment on the equity side of the court. This argument would also be conditioned by the trial court's finding an inadequate remedy at law. See Schoshinski, supra note 4, at 532.

34. Adams v. Lancaster, supra note 5.

35. The Housing Regulations provide for a fine up to $300 or ten days imprisonment for each violation. HousING REG. § 2104 (1967). But penalization of the landlord does little to relieve the low-income tenant of his plight. Where extensive repairs are needed, the landlord may be willing to pay a small monetary fine instead of undertaking such a costly project.

The fact that the present Director of the District of Columbia's Department of Licenses and Inspections, Julian Dugas, has also been a prime mover in searching out private tenants' remedies indicates some official recognition of the weaknesses of public enforcement. For a discussion of various administrative and legal difficulties of code enforcement and compliance, see Note, Enforcement of Municipal Housing Codes, 78 HARV. L. REV. 801 (1965). A brief explanation for the ineffectiveness of public enforcement has been stated as follows:

One of the few things about which every observer of the slum housing situation agrees is that present enforcement techniques have been a failure. The combination of bureaucratic overlapping and understaffing, the use of procedural delays to the advantage of recalcitrant landlords, and the lack of militancy by both administrative and judicial officials, have all worked against the achieving of significant change.

Sax & Hiestand, Slumlordism as a Tort, 65 MICH. L. REV. 869, 915 (1967).
The Commissioners of the District of Columbia hereby find and declare that there exist residential buildings and areas within said District which are slums or otherwise blighted

The Commissioners further find and declare that such unfortunate conditions are due, among other circumstances, to certain conditions affecting such residential buildings and such areas, among them being the following: dilapidation, inadequate maintenance, overcrowding, inadequate toilet facilities, inadequate bathing or washing facilities, inadequate heating, insufficient protection against fire hazards, inadequate lighting and ventilation, and other unsanitary or unsafe conditions.

The Commissioners further find and declare that the aforesaid conditions . . . are deleterious to the health, safety, welfare and morals of the community and its inhabitants.

The Commissioners, accordingly, promulgate these regulations for the purpose of preserving and promoting the public health, safety, welfare, and morals.

More specifically, the Commissioners state in the Regulations that "[n]o owner, licensee, or tenant shall occupy or permit the occupancy of any habitation in violation of these regulations." Congress has made an equally forceful statement declaring it "to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose . . . ."

Similar policy considerations have been found sufficient to warrant reading a private remedy into a statute that has none. For example, the Supreme Court in *J.I. Case Co. v. Borak* noted that a statute's design to protect a particular class of persons "certainly implies the availability of judicial relief where necessary to achieve that result." There is precedent in the District of Columbia for this proposition. The analogy between Housing Regulations violations and the Loan Shark Law cases of the U.S. Court of Appeals for the District of Columbia is clear. The D.C. Municipal Court of Appeals has iterated similar relief in *Rubin v. Douglas* concerning unlicensed medical practice.

Recognition of such policy considerations at the trial level can be found in

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37. *Id.* at § 2301.
40. *Id.* at 432.
Chief Judge Harold Greene's opinion in *Franklin Investment Co. v. Summers,*\(^43\) which involved a violation of regulations regarding sales of repossession automobiles—regulations which, like the Housing Regulations, provide explicitly only for public enforcement. It was held that the violation of these regulations voided the right to a deficiency judgment. By a parity of reasoning, a violation of the Housing Regulations would void the right to retain or obtain a rental payment. More significantly, Judge Greene argued from the Housing Regulations to reach the conclusion that repossession regulations have civil consequences:

In *Whetzel v. Jess Fisher Management Co.* [citation omitted], the United States Court of Appeals for this Circuit held that a standard established in a penal statute [Housing Regulations] for the protection of particular individuals will likewise be considered in determining their civil rights and liabilities. *Whetzel* to be sure, was a tort case, but its rationale is equally applicable here. As indicated supra, public policy as established by the legislature plays an important part in the construction and the enforcement (or non-enforcement) of contracts.\(^44\)

The reasoning of these cases clearly indicates that a contract to rent premises in violation of the Housing Regulations should be void as against public policy, but the consequences of this finding may vary depending upon when the violation occurred and which party brings suit.

If the landlord is suing for rent due and the premises violate the Housing Regulations, he cannot claim the rent under the contract since it is illegal. Instead he must attempt to recover the reasonable value of the premises—make, in effect, a quantum meruit recovery. Since 1881 a quantum meruit recovery on an illegal contract has been forbidden by courts in the District of Columbia. In *Strong v. District of Columbia*\(^45\) the court found illegal a builder's contract with the D.C. Board of Public Works. Congress had passed legislation requiring congressional appropriation for money spent by the District government; no such appropriation had been passed for work performed by Strong. In denying Strong's attempt at quantum meruit recovery of $268,502, the court reasoned:


\(^44\) Franklin Investment Co. v. Summers, supra note 43. In Whetzel v. Jess Fisher Management Co., 282 F.2d 943 (D.C. Cir. 1960), a ceiling had fallen on a tenant. The U.S. Court of Appeals for the District of Columbia held that the Housing Regulations imply a "statutory duty" on the lessor. The landlord's common law tort liability was thus broadened to include a duty of care imposed by statute.

\(^45\) 12 D.C. (1 Mackey) 265 (Sup. Ct. 1881).
It would be imputing to Congress a lamentable lack of wisdom to suppose that the plain purpose of the statute . . . could be successfully evaded by so shallow a contrivance as that here relied upon.

To allow a recovery upon a quantum meruit for the recovery of money claimed to be due for work done under a contract which the law has pronounced void, and payment of which is forbidden by law, would render the whole inhibition futile, and virtually work a repeal of the statute . . . .

The parallel between Strong and Housing Regulations cases is clear. Leasehold interests traditionally have been viewed as real chattels, having both the nature of contract and of an estate in property passing with the contract. Even when the contract was breached by the landlord, a right to recover rent still arose from the obligation of the estate in land. However, the tenant's use of an estate uninhabitable by definition of law should not be judicially recognized as a benefit requiring consideration any more than the $268,502 of work Strong performed for the District of Columbia. The clear thrust of cases in this jurisdiction requires that recovery be denied to a landlord who is party to an illegal contract.

That the landlord cannot recover rent due under the illegal bargain does not mean the tenant can recover the ill-gotten gains paid to the landlord. The tenant may be found to be in pari delicto with the landlord. The tenant, strictly speaking, also violates the Housing Regulations, which state that "[n]o owner, licensee, or tenant shall occupy or permit the occupancy of any habitation in violation of these regulations." (Emphasis added.)

However, a series of Loan Shark Law cases has provided the District of Columbia courts with ample precedents to grant tenants recovery under an illegal lease. Hartman v. Lubar, an action by a borrower to recover chattels pledged under a void contract, stated that the "general rule is that an illegal contract . . . is void and confers no right upon the wrongdoer." After restating the Hartman rule, the court in Royall v. Yudelevit found the theory of pari delicto no problem in cases of this nature, i.e., "statutory prohibition

46. Id. at 271. The rationale of Strong was reaffirmed in Gesellschaft Fur Drahtlose Telegraphie M.B.H. v. Brown, 78 F.2d 410 (D.C. Cir. 1935). Plaintiff Brown had made a contingent fee lobbying contract with the defendants. The court denied recovery under the contract since such contracts were void as against public policy. The court further denied Brown's attempt at quantum meruit recovery for his successful efforts on behalf of defendant's legislation.
47. See C. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY 69 (1962).
49. HOUSING REG. § 2301 (1967).
50. Supra note 41.
51. Hartman v. Lubar, supra note 41, at 45.
52. Supra note 41.
designed for police or regulatory purposes . . . .” Royall held that a member of the class for whose protection the statute was passed was not in pari delicto and thus allowed recovery to plaintiff for wrongful foreclosure on a note void as against the Loan Shark Law. The final extension of Hartman occurred in Indian Lake Estates, Inc. v. Ten Individual Defendants where the damages recovered by the plaintiff-borrower were the interest collected under the contract plus all of the principal repaid to the defendants. Under the theory of these Loan Shark Law cases, a tenant could recover all rent paid the landlord during the time the premises contained Housing Regulations violations.

Supported by the precedential weight of these prior appellate decisions, General Sessions Judge Justin Edgerton applied the illegal bargain theory of recovery to landlord-tenant case law in Adams v. Lancaster. Under an oral contract to lease certain premises, the plaintiff had advanced $80 to the landlord; she then sought return of the deposit, claiming that the premises were uninhabitable by Housing Regulations standards and insufficient for a family the size of hers according to the Certificate of Occupancy. At no time did the plaintiff occupy the premises. In a brief memorandum decision, citing as authority Hartman v. Lubar, Judge Edgerton permitted Mrs. Adams to recover her deposit. Even more significantly, the landlord was not permitted to recover the moving expenses he advanced to Mrs. Adams since the landlord was the wrongdoer in the illegal transaction.

Within four months of the Adams decision, the District of Columbia Court of Appeals upheld the illegal bargain defense. In Brown v. Southall Realty Co., the landlord was aware of certain existing Housing Regulations violations when he leased the premises to Mrs. Brown. When Mrs. Brown’s rent fell $230 in arrears, the landlord sued for possession. In denying recovery, Judge Quinn stated:

The more reasonable view is, therefore, that where such conditions exist on a leasehold prior to an agreement to lease, the letting of such premises constitutes a violation of Sections 2304 and 2501 of the Housing Regulations, and that these Sections do indeed “imply a prohibition” so as “to render the prohibited act void.” Neither

53. Hartman v. Lubar, supra note 41, at 45.
55. Supra note 41.
56. Similar support for the tenant’s recovery is found in Rubin v. Douglas, supra note 42. A patient sued an unlicensed medical practitioner for return of all consideration paid for treatments. Finding that the contract was illegal and that the patient as a member of the class to be protected was not in pari delicto, the court permitted the patient to recover all the consideration.
57. Supra note 5.
58. Supra note 41.
does there exist any reason to treat a lease agreement differently from any other contract in this regard.\textsuperscript{60} (Emphasis added.)

Recently, in \textit{Saunders v. First Nat'l Realty Corp.},\textsuperscript{61} a landlord brought an action for possession because of nonpayment of rent. The tenants had conceded their inability to prove existence of Housing Regulations violations at the beginning of the tenancy, and the trial court rejected their offer to show fifteen-hundred violations in the apartment complex at the time of the suit for possession. The District of Columbia Court of Appeals held that violations occurring after the tenancy commences do not void the lease. In distinguishing \textit{Brown}, the court noted that the landlord's knowledge of the violations in \textit{Brown} when the premises were rented rendered the resultant lease void and unenforceable.

Under existing case law in the District of Columbia, therefore, the tenant is permitted to recover all consideration given under an illegal lease when the tenant has not yet occupied the premises. The landlord cannot recover rent for the use of premises if they were uninhabitable by Housing Regulations standards at the beginning of the tenancy. Arguably, the tenant should be permitted to recover all consideration paid for actual use of the premises when the lease is initially illegal.\textsuperscript{62} It is questionable, however, whether the courts should permit tenants to recover rent paid or plead the Housing Regulations violations as an equitable defense where they have developed during the tenancy, since there is a possibility that the tenant, desiring to avoid rental obligations, may himself cause such defects to develop. But flat prohibition against such recovery is not a reasonable solution to what is essentially a burden of proof problem. The courts could assign the tenant the burden of proving that elements of the Housing Regulations violation within his knowledge were caused by the landlord's neglect. Certainly, forbidding all such recoveries does not seem sensible when the Housing Regulations

\textsuperscript{60} \textit{Id.} at 837.


\textsuperscript{62} \textit{Cf.} Indian Lake Estates, Inc. v. Ten Individual Defendants, \textit{supra} note 41.
violation could be a structural defect over which the tenant usually has no control.

The illegal bargain theory requires relative simplicity of proof. All the tenant need prove is: (1) his tenancy, i.e., that he is a member of the class to be protected; (2) a report of a Housing Regulations violation resulting from the landlord's failure to repair, i.e., that the bargain is illegal; and (3) the amount of the rent paid while the premises violated the Housing Regulations. The difficulty with this theory, ideal though it may seem to the tenant, is that the remedy is too drastic; it could easily force slum landlords out of business, leaving tenants with no available housing to fit their income. This consequence is not as remote as it may first appear. As one commentator has pointed out:

The essential assumption . . . must be that the private owner of low-cost substandard housing can be compelled to rehabilitate and still serve the same or similarly situated low-income tenants. All the evidence, however, points to the unlikelihood of any such result where major rehabilitation is required. The failure of the private unsubsidized market to provide new housing for the poor, the marked increase of rents after rehabilitation, the drop in real estate values in the face of serious code enforcement, all suggest what has by now become widely recognized: Standard housing for the poor, adequately maintained, is simply not a sufficiently profitable business to attract investors.63

In central cities, where the primary value of land may lie in holding it as an investment in expectation of a rise in its value resulting from private or public redevelopment, a landlord is unlikely to continue expending time in operating a dwelling place if it nets no income, since his return will come ultimately only if the building is razed. As suburban politicians continually point out,64 core areas suffer from a chronic lack of parking lots. Conversion of money-losing apartment house into a break-even parking lot or a tax-loss vacant lot may appear highly desirable to a landlord who is faced with correcting a variety of Housing Regulations violations. Drastic reductions of profit from dwellings may eliminate even dilapidated premises in central city areas.

**Retaliatory Eviction and its Prevention**

Each of the preceding theories assumes the tenant's dwelling is uninhabitable by Housing Regulations standards. Critical to the proof of such unin-

63. Sax & Hiestand, supra note 35, at 873-74. (Footnotes omitted.)
64. A bill was introduced in the Senate on May 1, 1968, which would create a "District of Columbia Parking Board." Title III of this bill, entitled the "District of Columbia Parking Facility Act," would empower the Parking Board to acquire such property as needed to maintain adequate parking facilities for the District of Columbia. The bill was referred to the Committee on Public Works. S. 3418, 90th Cong., 2d Sess. (1968).
habitability is a Housing Inspectors' report of the specific violations rendering the premises inadequate. The ability of the tenant to report these violations is essential not only to call into operation the public mechanism for Housing Regulations enforcement but also to evidence the unsuitable condition on which a civil action against the landlord is based. If a periodic tenant or a tenant at sufferance cannot make a report to the Bureau of Licenses and Inspections without being evicted in retaliation, then all remedies, no matter how sophisticated, are reduced to the common level of constructive eviction with its overriding problem of finding a new residence.

In *Tarver v. G. & C. Construction Corporation*, the United States District Court for the Southern District of New York held that a retaliatory eviction violates the constitutional right to petition for a redress of grievances. Since this right is a right against government, and not private parties, government abridgement must first be shown. The *Tarver* court relied upon *Shelley v. Kraemer* in finding this requisite "state action." In *Shelley* the Supreme Court ruled that judicial enforcement of private agreements containing restrictive covenants against selling houses to Negroes violated the equal protection clause of the fourteenth amendment. The judicial intervention supplied the state action. The court in *Tarver* thus reasoned that not only are the means and terms of the landlord's right to evict established by statute, but the eviction itself is also effectuated by use of the state courts. These facts were held sufficient to constitute state action, and the tenant's first amendment right to petition the government for a redress of grievances barred a landlord's retaliatory eviction.

*Edwards v. Habib* presented the District of Columbia courts with the retaliatory eviction problem. Mrs. Yvonne Edwards, a month-to-month tenant, complained to the Department of Licenses and Inspections about Housing Regulations violations. After an inspection disclosing forty such violations, the Department notified the landlord, Nathan Habib, to repair the premises. Pursuant to the District of Columbia eviction statute, which does not require a landlord to give any reason at all for eviction, Habib gave Mrs. Edwards a thirty-day notice to vacate. When Mrs. Edwards refused to surrender the premises, Habib obtained a default judgment for possession. Mrs. Edwards moved to reopen the judgment, and Chief Judge Harold Greene of the Court of General Sessions, in a memorandum opinion on the motion, concluded that a retaliatory motive, if proved, would constitute a defense to an action for possession. Judge Greene avoided the "state action" difficulty of *Tarver* by

65. Civil No. 64-2945 (S.D.N.Y. Nov. 9, 1964).
ruling that a retaliatory eviction abridged a citizen's constitutional right to inform his government of a violation of the law—a right which "does not depend upon any of the Amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action . . . ."70 In effect, rights as fundamental as the right to report violations of law are protected against individuals' action. In setting aside the default judgment, Judge Greene stated that the burden would be upon the tenant in each instance to show that the landlord's purpose was unlawful.

Nonetheless, at the subsequent Habib trial the spirit of Judge Greene's opinion was obliterated by a different judge's demand for an unreachable level of proof regarding the landlord's intentions. Mrs. Edwards sought to prove Habib's intention with circumstantial evidence based on his actions and statements to the Department of Licenses and Inspections.71 The trial judge ruled all circumstantial evidence inadmissible as bearing only on "the landlord's reason, for seeking possession," and not on his intentions.72 Ultimately the court ruled that only direct evidence of the landlord's purpose in the form of admissions is admissible.73 Such admissions were naturally not available from a careful landlord's pre-trial statements and correspondence; the trial court's stringent restrictions on the cross-examination of the landlord insured that there would be no such admissions in court.74 The eventual result of the trial rulings was to give the tenant a theoretical remedy with no practical possibility of proving his case.

After the D.C. Municipal Court of Appeals upheld the trial judge's rulings,75 the United States Court of Appeals for the District of Columbia accepted the case for appeal. Judge J. Skelly Wright, after a closely-reasoned consideration of the constitutional arguments advanced by the New York court in Tarver and by Judge Greene in his memorandum decision, decided
for Mrs. Edwards on the basis of a statutory interpretation. He reasoned that:

It is true that in making his affirmative case for possession the landlord need only show that his tenant has been given the 30-day statutory notice, and he need not assign any reason for evicting a tenant who does not occupy the premises under a lease. But while the landlord may evict for any legal reason or for no reason at all, he is not, we hold, free to evict in retaliation for his tenant's report of housing code violations to the authorities. As a matter of statutory construction and for reasons of public policy, such an eviction cannot be permitted.

The housing and sanitary codes, especially in light of Congress' explicit direction for their enactment, indicate a strong and pervasive congressional concern to secure for the city's slum dwellers decent, or at least safe and sanitary, places to live. Effective implementation and enforcement of the codes obviously depend in part on private initiative in the reporting of violations . . . . To permit retaliatory evictions, then, would clearly frustrate the effectiveness of the housing code as a means of upgrading the quality of housing in Washington.

Judge Wright recognized the difficulty of proving a landlord's subjective motivation when he need give no reason at all for evicting a tenant. Yet he noted that such a determination "is not significantly different from problems with which the courts must deal in a host of other contexts, such as when they must decide whether the employer who discharges a worker has committed an unfair labor practice because he has done so on account of the employee's union activities."

76. Edwards v. Habib, supra note 67. The court did not reach the constitutional issue since "where two interpretations are plausible, [the court will] opt for the one that avoids the constitutional questions. [Citation omitted.] And second, in discerning the intent of Congress the court must assume that it too sought to avoid constitutional doubt and to protect the constitutional interests which are at stake." (Citation omitted.) Id. at 4 n.6.

77. Id. at 20-22. (Footnotes omitted.)


A Massachusetts statute precludes recovery pursuant to a notice to quit if the premises violates regulatory standards and "may endanger or materially impair the health or safety of persons occupying the premises." Mass. Gen. Laws Ann. ch. 239, § 8(A) (Supp. 1968). Pennsylvania suspends the tenant's obligation to pay rent when premises fall below statutory standards and, while requiring the tenant to deposit rent in court, further provides that "[o]n no tenant shall be evicted for any reason whatsoever while rent is deposited in escrow." Pa. Stat. Ann. tit. 35, § 1700-1 (Purdon Supp. 1968).

For a discussion of recent legislation proposed for the District of Columbia concerning retaliatory eviction, see Note, Retaliatory Evictions and the Reporting of Housing
Remedial Legislation for the Low-Income Tenant

The inadequacies of antiquated judicial remedies have prompted several states to enact remedial legislation. These statutes represent alternative means of compelling landlords' compliance with housing standards. As with public enforcement, however, such provisions generally have been ineffective where substandard and blighted housing is in need of costly and extensive repairs.

Several states impose a statutory obligation to maintain and repair on lessors and attempt to enforce this duty by "repair and deduct" laws.79 If the landlord fails to effect necessary changes in housing conditions, the tenant may contract for the repairs and deduct the cost from the rent due. California and Montana, however, limit the deduction to one month's rent,80 a considerable shortcoming if extensive repairs are needed. A Pennsylvania statute suspends the tenant's duty to pay rent when a dwelling is "unfit for human habitation."81 The rent withheld must be deposited in an escrow account until the housing conditions are ameliorated. If the premises are still uninhabitable after six months, the money held in escrow may be used for repairs or returned to the tenant. Maryland has recently enacted a similar statute authorizing the tenant to pay rent into court and plead as a defense to a

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79. CAL. CIV. CODE ANN. §§ 1941, 1942 (West 1954); MONT. REV. CODES ANN. §§ 42-201, 42-202 (1947); N.D. CENT. CODE ANN. §§ 47-16-12, 47-16-13 (1960); OKLA. STAT. ANN. tit. 41, §§ 31, 32 (1954); S.D. CODE §§ 38.0409, 38.0410 (1939). Louisiana has a similar statute which allows the tenant to repair and deduct upon proof that the repairs are indispensable. LA. CIV. CODE ANN. art. 2692-94 (West 1952).
80. CAL. CIV. CODE ANN. §§ 1941, 1942 (West 1954); MONT. REV. CODES ANN. §§ 42-201, 42-202 (1947). The one-month limitation is presently being tested in a California case where the plaintiff-landlord refused to fix a faulty gas line. The defendants-tenants hired a plumber to repair the gas line and arranged to pay him in monthly installments. The tenant pleaded CAL. CIV. CODE § 1942 as a defense to a suit for unlawful detainer and argued that it applies so long as the monthly installments do not exceed the rent. Earle v. Lachelli, No. 598854 (San Francisco Mun. Ct., answer filed Feb. 21, 1968).
landlord's action housing conditions which constitute “a fire hazard or a serious threat to the life, health or safety of occupants...”\(^8\)

New York has several statutory provisions which relieve the tenant from paying rent while the premises remain in a deteriorated state. The court may stay a proceeding to dispossess a tenant for nonpayment of rent, or stay an action for rent upon proof that the condition of the premises is such as to “constructively evict” the tenant.\(^3\) The tenant must deposit rent due in court, and the court in its discretion may release moneys so deposited to pay bills for necessary repairs. When the stay is vacated, the landlord is entitled to the balance. This “constructive eviction” standard has been criticized as being too vague.\(^4\) The provision allowing landlords to recover back rents once the repairs are made has been objected to since the lessor may easily procrastinate and evade the purpose of the statute. The landlord, for example, may refuse to provide heat during the winter, purchase fuel in the spring, and then recover the back rents paid into court, thereby avoiding winter fuel costs.\(^5\)

Abatement of rent is also authorized under New York's Multiple Dwelling Law. If a “rent impairing” violation exists in a multiple dwelling which “constitutes . . . a fire hazard or a serious threat to the life, health or safety of occupants thereof,” no rent may be recovered by the landlord.\(^6\) However, the effect of this provision is severely weakened in that the tenant must wait six months after notice of the “rent-impairing” violation is given the landlord by the Department of Housing and Buildings before rent can be abated. For the tenant residing in a dwelling which needs immediate repairs, this statute is obviously inadequate. Furthermore, if the tenant voluntarily pays rent which he would be entitled to withhold, he cannot thereafter recover it.\(^7\) Finally, the so-called Spiegel Law authorizes a public welfare official to withhold rental benefits to welfare recipients who are living in housing accommodations “dangerous, hazardous or detrimental to life or health.”\(^8\)

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84. See Comment, Rent Withholding and the Improvement of Substandard Housing, 53 Calif. L. Rev. 304, 324-25 (1965). A New York case decided under this statute held that conditions such as windows not readily openable, bathroom tile floors in need of repairs, improperly fitted doors, bathroom waste stoppers in need of repair, concealed leaks, and a hole in a wood floor did not amount to constructive eviction entitling tenants to a stay of proceedings. DeKoven v. 780 West End Realty Co., 48 Misc. 2d 951, 266 N.Y.S.2d 463 (Civ. Ct. 1965).
86. N.Y. Mult. Dwelling Law § 302-a (McKinney Supp. 1967). This provision also permits the tenant to set up as a defense to an action for possession or rent the “rent impairing” violation, but the tenant must deposit rent due in court.
87. Id. at § 302-a(3) (d).
88. N.Y. Soc. Welfare Law § 143-b(2) (McKinney 1966). The Spiegel Law was held not violative of the equal protection clause of the U.S. Constitution in two cases.
Such action by welfare officials is a valid defense to a suit by the landlord for nonpayment of rent. Difficulties with this enactment are the vagueness in the “dangerous, hazardous, detrimental” standard, the investment of too much administrative power in welfare officials, and the restriction of the provision to welfare recipients. 89

In addition to the problems of administering such statutes, rent-withholding or rent-abatement threatens to drive slum landlords out of business. This fear has been well-stated as follows:

[Rent strikes, abatement, and withholding] all share the common assumption that the landlord can be whipped into line by the exertion of financial pressure, [but] their prospects for success raise some serious questions.

Insofar as these schemes deny the landlord the funds which would ordinarily be used for repairs, they are in a sense self-defeating, and thus tend to intensify the very problem they are designed to solve. The hope, of course, is that the expenditure of money for needed repairs will be less costly to the landlord than the abandonment of his rents. . . . However, the focus of our concern is the seriously deteriorated building . . . . With such properties, the landlord is able to succeed economically only if he can “milk” the property, taking his rents while he lets the building deteriorate and stays a step ahead of code enforcement sanctions. Unless a landlord can afford to effect the repairs demanded and still make an acceptable profit, the hope for economic incentive cannot operate, and the rational decision for him will be to abandon the building or sell it at a greatly depressed price . . . . 90

In the case of such a sale, those who buy “are necessarily the most speculative of speculators” and will most likely make only the minimum alterations required to have rents reinstated. 91

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90. Sax & Hiestand, supra note 35, at 915-16.
91. Id. at 916-17. The authors give as an example of another method of evasion the sale of the deteriorated building to an owner of many such properties. The new owner then begins to repair one property, thus showing good faith. Public officials will probably give him sympathetic treatment since he is presumably doing the best he can. Ibid.

The authors conclude that both current judicial remedies and statutory innovations are inadequate. They propose a substantial civil action in tort, i.e., the “slumlord” maintaining premises in a substandard and blighted condition would commit an actionable tort. The damages awarded should be large enough to offset potential retaliatory eviction and rent increases, and reflect a deterrent element as well. Id. at 875. The difficulty with this theory is that a potential tort action merely becomes another insurable risk of the landlord’s business. If the premiums of an insurance policy cover-
Similar legislation recently proposed for the District of Columbia provides:

The Commissioners of the District of Columbia or one or more tenants occupying leased dwelling units may maintain an action in the District of Columbia Court of General Sessions for an order directing the deposit of rents into court and their use for the purpose of remedying conditions that violate the housing regulations of the District of Columbia.\(^9\)

This "rent trusteeship" is a valid defense to any action or proceeding for non-payment of rent.\(^9\) If the lease is for less than three years any covenant or undertaking by a tenant to make repairs is declared void and unenforceable.\(^9\) The tenant's action would be a summary proceeding which may be commenced if, within fifteen days after the Department of Licenses and Inspection serves a notice of deficiency upon the landlord, he fails to make a "good faith effort" to undertake repairs.\(^9\)

**Conclusion**

The low-income tenant in the District of Columbia is still confronted with crises on social and legal fronts. His situation is indeed an unenviable one. Legal avenues of recovery remain unclear and remedies continue to prove inadequate in light of an ever-increasing shortage of habitable low-cost dwellings. However, the recent *Brown* and *Habib* decisions of the District of Columbia courts and H.R. 257, the bill presently before the House Committee on the District of Columbia, offer some encouragement towards improving substandard housing or, at the very least, indicate judicial and legislative recognition of slum tenants' problems.

Fundamental to any available or proposed remedies of the tenant is the need to make the fact of a landlord's retaliatory motive an effective defense to eviction. Summary eviction not only renders fruitless any effort to seek initial relief through the administrative or judicial process, but also threatens to render moot many appeals designed to test new legal theories of recovery or defenses.\(^9\) *Habib* has made the existence of retaliation a theoretical defense to eviction; trial courts must now make it an effective defense in practice.

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\(^{92}\) H.R. 257, 90th Cong., 1st Sess. § 1237 (1967). A companion bill, S. 1910, 90th Cong., 1st Sess. (1967), has been introduced into the Senate. Both bills have been referred to the Committee on the District of Columbia.


\(^{94}\) *Id.*, tit. III, § 1252.

\(^{95}\) *Id.*, tit. I, § 1238.

by drawing reasonable inferences regarding landlords' motivations from circumstantial evidence or presumptions. Title II of H.R. 257 forbids any eviction for a period of nine months after a complaint is made to the Department of Licenses and Inspections, except in certain specified circumstances, but at most this would merely provide a "stop-gap period which would enable the tenant to relocate his family." Brown and Saunders limit the illegal bargain recovery theory to cases where the leased premises were in violation of the Housing Regulations at the beginning of the tenancy. The tenant may recover consideration paid before taking possession or, if the tenant has used the premises, he may properly defend a suit for nonpayment of rent on the theory the landlord has entered into an illegal bargain. The District of Columbia appellate cases holding that members of a class protected by regulatory statutes are not in pari delicto suggest that tenants should recover all rents paid whether the dwelling violates housing standards before or after the tenancy commenced. Such an extension of Brown would indeed be highly desirable from the tenant's viewpoint; unfortunately, given the economic difficulties of operating standard low-cost housing, it would likely create more problems than it would solve. In fact, the major benefit of Brown may well be to bring inner-city landlords' support behind moderate and constructive compromise legislation.

H.R. 257, introduced in the House on January 10, 1967, is still before the House District Committee. The partial solution afforded by this bill is neither as insipid as constructive eviction or an action for damages nor as drastic as the illegal bargain relief. But, as is the case with most complex problems, the problem of slum housing will not admit of the simple solutions embodied in one new statute and a few court decisions. A whole web of interacting influences must be resolved to insure amelioration of the critical situation. Legislation providing federal aid for home ownership should be implemented to enable many lower-income persons to avoid traditional tenancy problems. Open Housing Laws must be enforced so minority groups can follow the flight to better and cheaper housing in the suburbs. Vast rapid transit systems will be required so that those low income families who do move to

97. H.R. 257, 90th Cong., 1st Sess. (1967); see supra note 78.
98. 36 GEO. WASH. L. REV., supra note 78, at 198. It is interesting to note that S. 2331, 89th Cong., 2d Sess. (1966) would make tenants eligible for relocation payments if they were evicted from substandard and unsafe dwellings. This bill was never reported out of committee.
100. Such legislation was recently enacted by Congress. The housing bill, S. 3497, contains a new home ownership program which would enable poor people to buy homes up to a cost of $15,000, with the federal government paying all but 1% of the interest on mortgage payments. The measure also authorizes a similar subsidy program for low-rent apartments. Housing and Urban Development Act of 1968, Pub. L. No. 90-448 (Aug. 1, 1968).
suburban and rural areas will be able to reach jobs spread over the metropolis. Indeed, as a significant factor in the current urban crisis, the problems of low income tenants can only be remedied by the combined all-out efforts of the executive, legislative and judicial branches of government.\textsuperscript{101}

101. An example of the necessary cooperation between the executive and judicial branches is seen in the efforts of Lorenzo Jacobs, Chief of Housing Division of the District of Columbia Department of Licenses and Inspections, to turn housing inspectors into “walking information booths,” informing tenants of both public and private remedies and, in particular, of rent-withholding remedies suggested by \textit{Brown v. Southall Realty Co.}, \textit{supra} note 99.

At the present time, however, agencies of the District of Columbia government are defendants in a class action for declaratory judgment and injunctive relief. The class is composed of tenant unions and councils representing persons residing in public housing units and private units leased by the National Capital Housing Authority. Plaintiffs allege that the defendant, National Capital Housing Authority, has failed or refused to make necessary repairs to the public-housing units. One significant question is whether the Housing Regulations apply to the federally-owned project. Plaintiffs joined as defendant the Department of Licenses and Inspections for failure to enforce the Regulations. \textit{Knox Hill Tenant Council v. Washington}, Civil No. 1943-68 (D.D.C., filed Aug. 1, 1968). For a discussion of the special difficulties tenants face in suits against public agencies, \textit{see Note}, \textit{Remedies for Tenants in Substandard Public Housing}, \textit{68 Colum. L. Rev.} 561 (1968).