University of Arkansas at Little Rock Law Review

Volume 35
Issue 4 *The Ben J. Altheimer Symposium: A Question of Balance: 40 Years of the Uniform Residential Landlord and Tenant Act and Tenant's Rights in Arkansas*

Article 3

2013

"But My Lease Isn't Up Yet!": Finding Fault with "No- Fault" Evictions

Eloisa C. Rodriguez-Dod

"BUT MY LEASE ISN'T UP YET!": FINDING FAULT WITH "NO-FAULT" EVICTIONS

*Eloisa C. Rodriguez-Dod**

This Article critically examines the eviction of tenants for actions or events outside of the tenants' control—"no-fault" evictions. For example, tenants may be evicted because the landlord's property was foreclosed, the landlord wants to re-occupy the property, or the landlord wishes to sell the property to a purchaser who intends to occupy it. This Article analyzes and critiques the common law, statutes, and proposed uniform acts that may permit evictions of tenants from private residential dwellings under such circumstances. In addition, this Article discusses the necessary balance between a landlord's rights and obligations and those of a tenant, and offers recommendations.

I. INTRODUCTION

One of the most complex areas of landlord tenant law to analyze is "no-fault" evictions because it raises significant legal issues that intersect property, contract, sales, and foreclosure laws and systems. The author first considered these issues as a panelist at the 2013 Ben J. Altheimer Symposium ("Symposium"). This Article expands on the Symposium discussion, recommends that the Revised Uniform Residential Landlord and Tenant Act ("RURLTA")[1] contain provisions clarifying this area, and suggests concrete considerations for such proposed provisions.

---

* Eloisa C. Rodriguez-Dod, Professor of Law, Florida International University College of Law, Miami, Florida. My deepest gratitude to Symposium Editor Kitty L. Cone, Editor-in-Chief Abtin Mehdizadegan, and the other editors of the University of Arkansas at Little Rock Law Review and their advisor, Professor Lynn Foster, for organizing and inviting me to participate in the 2013 Ben J. Altheimer Symposium (the "Symposium") panel titled "A Question of Balance: 40 Years of the Uniform Residential Landlord and Tenant Act and Tenant's Rights in Arkansas." I would also like to thank keynote speaker, Professor Dale Whitman, and Symposium panelists Professor Alice Noble-Allgire, Douglas Smith, Esq., Professor Donald Campbell, Professor Elena Marty-Nelson, Professor Melissa (Missy) Lonegrass, and Lawrence McDonough, Esq., whose comments helped me refine my Article. Lastly, I am grateful to my research assistants, Aubrie Brake, for her superb work in helping me prepare for the Symposium, and Latoya Brown, for her exceptional work in helping me with the drafts of this Article.

1. The National Conference of Commissioners on Uniform State Laws is currently in the process of revising the Uniform Residential Landlord and Tenant Act ("URLTA"). As of the date of submission of this Article, there were three drafts of the revised URLTA. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT (Sept. 17, 2012), *available at* http://www.uniformlaws.org/shared/docs/Residential%20Landlord%20and%20Tenant/2012s

In 1969, the National Conference of Commissioners on Uniform State Laws ("NCCUSL") undertook the task of drafting reform landlord tenant legislation.[2] Among its goals, NCCUSL wanted to "[i]nsure tenants the right to occupy a dwelling as long as they fulfill their responsibilities."[3] Three years later, in 1972, NCCUSL approved the Uniform Residential Landlord and Tenant Act ("URLTA").[4] Subsequently, twenty-one states adopted URLTA or a modified version.[5]

Forty years after promulgating URLTA, NCCUSL formed a new drafting committee ("Drafting Committee") to undertake a comprehensive revision of URLTA.[6] NCCUSL recognized that "there have been many new statutory and common law developments that affect residential landlord and tenant law,"[7] many of which are disparate or conflicting.[8] In addition, the study committee noted that some states still had no laws in effect regarding certain landlord tenant issues.[9] To achieve greater uniformity among the

---

ep17_URLTA_MtgDraft.pdf [hereinafter September 2012 RURLTA Draft]; REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT (Jan. 28, 2013 Draft), *available at* http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/2013jan28_RURLTA_MtgDraft.pdf [hereinafter January 2013 RURLTA Draft]; REVISED UNIF RESIDENTIAL LANDLORD & TENANT ACT (Apr. 2, 2013 Draft), *available at* http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/2013apr2_RURLTA_MtgDraft.pdf [hereinafter April 2013 RURLTA Draft].

2. *Residential Landlord and Tenant Act Summary*, UNIF. LAW COMM'N, http://www.uniformlaws.org/ActSummary.aspx?title=Residential%20Landlord%20and%20Tenant%20Act (last visited Mar. 5, 2013) [hereinafter *Act Summary*].

3. *Id.*

4. UNIF. RESIDENTIAL LANDLORD & TENANT ACT (amended 1974), *available at* http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta%201974.pdf.

5. The following states have adopted URLTA in whole or in part: Alabama, Alaska, Arizona, Connecticut, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington. *See Legislative Fact Sheet—Residential Landlord & Tenant Act*, UNIF. LAW COMM'N, *available at* http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Residential%20Landlord%20and%20Tenant%20Act (last visited Mar. 5, 2013) [hereinafter *Legislative Fact Sheet*].

6. *See* Memorandum from Sheldon F. Kurtz, Chair, Study Comm., Unif. Law Comm'n, to Scope and Program Comm., Unif. Law Comm'n at 24 (May 18, 2011), *available at* http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta_studycmtereport_051811.pdf [hereinafter Study Committee Memorandum]. The first meeting of the newly formed committee was held on March 9–10, 2012. *See* Unif. Residential Landlord & Tenant Act (20__) Drafting Comm., Unif. Law Comm'n, March 2012 Committee Meeting Agenda, *available at* http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta_mtgagenda_mar12.pdf.

7. *Committees*: *Residential Landlord and Tenant Act,* UNIF. LAW COMM'N, *available at* http://www.uniformlaws.org/Committee.aspx?title=Residential%20Landlord%20and%20Tenant%20Act (last visited Mar. 5, 2013) [hereinafter Committee Description].

8. *See* Study Committee Memorandum, *supra* note 6, at 23.

9. *Id.*

states,[10] the Drafting Committee was charged with "seek[ing] to codify best current practices in a revised act."[11]

A Drafting Committee memorandum noted that five issues related to evictions were not addressed in URLTA: "(1) the bases for eviction,[12] (2) required notice periods, (3) eviction procedures, (4) defenses to eviction, and (5) treatment of an evicted tenant's personal property after eviction."[13] Accordingly, one of the many issues the Drafting Committee is tackling is whether to include provisions regarding evictions in the draft of RURLTA.[14]

In addition, the Drafting Committee is working on proposed revisions of the section in URLTA on retaliatory evictions.[15] Commendably, the Drafting Committee expanded the grounds upon which a landlord could not refuse to renew a lease for retaliatory motives.[16] It also, however, expanded

---

10. *Id.*

11. *See* Committee Description, *supra* note 7.

12. In fact, URLTA includes in its provisions the following reasons for which a landlord may evict a tenant: 1) nonpayment of rent; 2) material noncompliance by the tenant with provisions of the rental agreement; 3) tenant's failure to maintain the premises materially affecting health and safety; and 4) holdover tenant. UNIF. RESIDENTIAL LANDLORD & TENANT ACT §§ 4.201, .301 (amended 1974). Because termination of a lease may lead to either a voluntary or involuntary eviction, this Article may use the terms "termination of lease" and "eviction" interchangeably. *See infra* notes 79–81 and accompanying text (discussing "voluntary" evictions).

13. Memorandum from Sheldon F. Kurtz & Alice M. Noble-Allgire, Co-Reporters, Unif. Residential Landlord & Tenant Act Drafting Comm., Unif. Law Comm'n, to Unif. Residential Landlord & Tenant Act Drafting Comm., Unif. Law Comm'n 1 (Sept. 13, 2012), *available at* http://www.uniformlaws.org /shared/docs/Residential% 20Landlord%20and%20 Tenant/2012sep13_URLTA_Memo_EvictionSurvey.pdf [hereinafter Eviction Survey].

14. *See id.* The September 2012 RURLTA Draft included a blank Article 10 titled "Evictions," with a note stating: "TO COME." *See* September 2012 RURLTA Draft, *supra* note 1. However, both the January 2013 and April 2013 drafts of RURLTA failed to include a similar blank Article indicating whether evictions will be addressed in RURLTA.

15. *See* Memorandum from Joan Zeldon, Drafting Comm. Chair, Sheldon Kurtz, Reporter, & Alice Noble-Allgire, Reporter, Unif. Residential Landlord & Tenant Act Drafting Comm., Unif. Law Comm'n, to Comm. of the Whole, Unif. Law Comm'n 1–2 (June 10, 2013), *available at* http://www.uniformlaws.org/shared/docs/Residential%20Landlord%20 and%20tenant/2013AM_RURLTA_IssuesMemo.pdf. "Retaliatory evictions" refers to retaliatory conduct by a landlord. *See* BLACK'S LAW DICTIONARY 1316 (9th ed. 2009). Although the landlord's conduct itself does not constitute an actual eviction, the landlord's actions consequently may, and often do, lead to a tenant's eviction. *See infra* Part IV.C.

16. Section 5.101 of URLTA stated:

> (a) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
>
> > (1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or

the reasons for which the landlord could refuse to renew the tenancy and recover possession.[17]

This Article explores certain instances when a landlord may evict a tenant for actions or events that are outside of a tenant's control: (1) the dwelling is subject to foreclosure, (2) the landlord wants to sell the premises, or (3) the landlord desires to occupy the property for personal use. In addition, this Article analyzes the related issue of when a landlord can avoid prohibitions on retaliatory evictions under some of these scenarios.[18]

> (2) the tenant has complained to the landlord of a violation under Section 2.104 [landlord's duty to maintain premises]; or
> (3) the tenant has organized or become a member of a tenant's union or similar organization.

UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101(a). The Drafting Committee has expanded the section on retaliatory conduct to read as follows:

> (a) Except as otherwise provided in subsection (c), a landlord may not retaliate against a tenant by taking one of the actions described in subsection (b) because the tenant has:
> (1) complained [in good faith] to a governmental agency responsible for the enforcement of:
> (A) a building, housing, or health code violation applicable to the premises;
> (B) laws or regulations prohibiting discrimination in rental housing; [or]
> [(C) governmental housing, wage, price, or rent control];
> (2) complained in good faith to the landlord of a violation under Section 303 [landlord's duty to maintain premises];
> (3) organized or become a member of a tenant's union or similar organization; [or]
> [(4) exercised [in good faith] a legal right or remedy under the lease or this [act]]; or
> [(5) pursued [in good faith] a legal action against the landlord or testified [in good faith] against the landlord in court].
> (b) A landlord may not [, within six months after the tenant's conduct in subsection (a),] retaliate against the tenant by:
> (1) increasing or threatening to increase the rent;
> (2) decreasing services, increasing the tenant's obligations, or otherwise substantially altering the terms of the lease;
> (3) bringing or threatening to bring an action for possession;
> (4) terminating or refusing to renew the lease; or
> (5) engaging in or threatening to engage in conduct prohibited under [the criminal code].

April 2013 RURLTA Draft, *supra* note 1, § 901(a)–(b) (alterations in original except "[landlord's duty to maintain premises]").

17. *Compare* UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101(c), *with* April 2013 RURLTA Draft, *supra* note 1, § 901(c).

18. URLTA is limited to residential tenancies and, thus, this Article will only address evictions from residential premises. This Article will not discuss eviction issues directly

These issues are of critical importance. As NCCUSL noted when URLTA was first adopted, "a man's home usually ranks second only to his family."[19] Yet, "[e]viction is perhaps the most understudied process affecting the lives of the urban poor."[20] An eviction may cause undue harm and hardship to a tenant—financially, psychologically, and socially. Evictions may affect any sector of society and, in fact, impact a large sector of the U.S. population, particularly women and minorities.

Eviction is an action by which the landlord compels the tenant to vacate the leased premises.[21] Historically, tenants could be evicted when their actions put them "at-fault." Grounds for "at-fault" eviction (i.e., evictions for cause) include a tenant's failure to pay rent, a tenant's holding over after termination of the lease, a tenant's material noncompliance with the lease agreement, and a tenant's failure to maintain the premises materially affecting health and safety.[22]

Recently, some landlords have been evicting tenants for no fault of their own.[23] Some states have been so concerned about these actions on the part of landlords that they have included legislation attempting to block the landlords from terminating leases for reasons outside of the tenants' control.[24] This Article focuses on three reasons for attempted "no-fault" evic-

---

related to tenants residing in federal and state subsidized housing, such as evictions from Section 8 housing for criminal activity of persons other than the tenant.

19. Act Summary, *supra* note 2, art.1.

20. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 90 (2012).

21. *See* BLACK'S LAW DICTIONARY 712 (9th ed. 2009). Eviction may be actual or constructive. Actual eviction is the "physical expulsion of a person from land or rental property." *Id.* Constructive eviction is "a landlord's act of making premises unfit for occupancy, often with the result that the tenant is compelled to leave." *Id.* For a further discussion of constructive eviction, *see* Donald E. Campbell, *Forty (Plus) Years After the Revolution: Observation on the Implied Waranty of Habitability*, 35 U. ARK. LITTLE ROCK L. REV. (forthcoming 2013); Douglas Smith, Speaker at the University of Arkansas at Little Rock, William H. Bowen Law Review Symposium: The Real Impact (Or Lack of) the Implied Warranty of Habitability (Feb. 1, 2013).

22. URLTA recognized these as bases for a landlord to terminate the lease and seek repossession. *See* UNIF. RESIDENTIAL LANDLORD & TENANT ACT §§ 4.201, .301.

23. *See* Memorandum from Alice Noble-Allgire, Reporter, Joint Editorial Bd. for Unif. Real Prop. Acts, to Unif. Law Comm'n URLTA Drafting Comm., on Early Lease Termination for Domestic Violence and Other Reasons, 3 (Feb. 12, 2012), *available at* http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta_memo_earlyleasetermination_021212.pdf [hereinafter Domestic Violence Memorandum] (citing Elizabeth M. Whitehorn, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII's Sex Stereotyping Theories to the Fair Housing Act***,** 101 NW. U. L. REV. 1419 (2007)).

24. For example, North Carolina has a statute that provides that a "landlord shall not terminate a tenancy, . . . based substantially on: (i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking." N.C. GEN. STAT. § 42-42.2 (2013); *see also* COLO. REV. STAT. § 38-12-402(1) (2013); WASH. REV. CODE

tions: foreclosure of the premises, proposed sale of the premises, or intended re-occupancy by the landlord. There are various other reasons why a tenant may be evicted for no fault of her own. For example, a landlord may attempt to terminate a lease and evict the tenant simply because she is a victim of domestic violence.[25] Or, a lease may be terminated where the premises have been condemned due to the landlord's failure to maintain the premises.[26] These types of "no-fault" evictions raise critical public policy concerns, but

---

§ 59.18.580(1) (2013). On the other hand, some jurisdictions have passed troubling nuisance ordinances that seem to encourage or basically force landlords to evict tenants who are victims of domestic violence. *See generally* Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117 (2013); *see also* Briggs v. Borough of Norristown, No. 2:13-cv-02191 (E.D. Pa. filed Apr. 24, 2013).

25. *See* Domestic Violence Memorandum, *supra* note 23, at 9.

26. Condemnation of the leased premises may occur either because the property is found to be unsuitable for habitation or the government takes the property through eminent domain. The latter is less troubling because, under the Takings Clause of the U.S. Constitution, the tenants should receive compensation for his loss. *See* U.S. CONST. amend. V, XIV; Alamo Land & Cattle Co., Inc. v. United States, 424 U.S. 295, 303 (1976). As to the former, a governmental entity that deems a structure unsafe or unfit for habitation will generally require the residents to vacate the premises. A landlord's failure to maintain a building may thus lead to a tenant's eviction from that property. Unscrupulous landlords have permitted buildings to purposefully deteriorate or otherwise become uninhabitable, leading to condemnation of buildings in order to circumvent their obligations, rid themselves of tenants, and potentially sell the land for profit. A 2003 study of evictions noted:

> The gentrification process sometimes finds private market forces working in tandem with government agencies to produce evictions: In New York City's Chinatown, for example, close to trendy areas like SoHo and TriBeCa, landlords have been calling in fire and building code inspectors to evict tenants in partitioned spaces – "remodeling" overlooked (and even created) by landlords for years until the bondtraders with deep pockets came looking for hip quarters and in the process producing rents four times the level of rent-controlled and rent-stabilized units.

Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUSING POLICY DEBATE 461, 466 (2003) (citing Yilu Zhao, *Chinatown Gentrifies, and Evicts*, N.Y. TIMES, Aug. 23, 2002, at A13).

In his recently published article, Matthew Desmond, Assistant Professor of Sociology and Social Studies, related the following regarding condemned leasehold property: "I met landlords who purposely rendered their property condemnable (e.g., by cutting off the electricity) before placing an anonymous call to the city about their own property—a call that, in turn, resulted in officials removing the tenants, thereby providing the landlord with a free and expedited eviction." Desmond, *supra* note 20, at 109 n. 13. My colleagues on the Symposium panel, Professor Donald Campbell and Douglas Smith, Esq., have done an excellent job of addressing issues related to the deteriorating physical condition of leased premises in their individual discussions of the warranty of habitability. *See supra* note 21.

For a discussion of issues related to dispossession of tenants when property is condemned due to an act of God, see Eloisa C. Rodriguez-Dod & Olympia Duhart, *Evaluating Katrina: A Snapshot of Renters' Rights Following Disasters*, 31 NOVA L. REV. 467 (2007).

they are not addressed in this Article because fellow panelists effectively addressed them at the Symposium.[27]

It is helpful to recall traditional landlord tenant law and its evolution in respect to evictions in order to better understand the current state of "no-fault" eviction laws generally. Accordingly, Part II of this Article provides an overview of the history of landlord tenant law and its relevance to evictions. Part III includes statistics regarding evictions. It also provides statistics on those who are affected by a landlord's early termination of a lease. Part IV analyzes the common law, statutes, or uniform acts regarding "no-fault" evictions of tenants from private residential dwellings in cases of foreclosure, sales, and landlord's intended re-occupancy. Lastly, the final part intertwines policy issues and proposes recommendations for RURLTA.

II. HISTORY AND DEVELOPMENT OF LANDLORD TENANT LAW AND EVICTIONS

The evolution of landlord tenant law progressed from status to property to contract and has been continuously plagued by tensions resulting from the simultaneous operation of property law and contract principles.[28] The status phase of landlord tenant law began in the period immediately following the Norman Conquest and lasted roughly until the fifteenth century.[29] At this early stage, villein tenants (feudal tenants) simply "held at the will of the lord with no right to alienate and with no right to pass the land on to his heirs."[30] The concept of a tenancy at will survived beyond the status phase into the property stage of the evolution. At common law, it was defined as a tenancy in which the tenant holds possession with the landlord's consent, but

---

27. *See* Campbell, *supra* note 21; Lawrence R. McDonough, *Then and Now: The Uniform Residential Landlord and Tenant Act and the Revised Residential Landlord and Tenant Act—Still Bold and Relevant*, 35 U. ARK. LITTLE ROCK L. REV. (forthcoming 2013); Smith, *supra* note 21.

28. Hiram H. Lesar, *The Landlord-Tenant Relation in Perspective: From Status to Contract and Back in 900 Years?* 9 U. KAN. L. REV. 369, 377 (1960); *see also* Medico-Dental Bldg. Co. of Los Angeles v. Horton & Converse, 132 P.2d 457, 462 (Cal. 1942) (quoting Samuels v. Ottinger, 146 P. 638, 638–639 (Cal. 1915) ("While it is true that a lease is primarily a conveyance in that it transfers an estate to the lessee, it also presents the aspect of a contract (citation omitted). This dual character serves to create two distinct sets of rights and obligations—"one comprising those growing out of the relation of landlord and tenant, and said to be based on the 'privity of estate,' and the other comprising those growing out of the express stipulations of the lease, and so said to be based on 'privity of contract'" (citation omitted). Those features of the lease which are strictly contractual in their nature should be construed according to the rules for the interpretation of contracts generally and in conformity with the fundamental principle that the intentions of the parties should be given effect as far as possible.").

29. Lesar, *supra* note 28, at 369.

30. *Id.*

without fixed terms.[31] During this phase, either party was allowed to terminate the lease at any time without notice.[32]

By the latter half of the eighteenth century, however, courts developed a presumption against tenancies at will.[33] This tendency was motivated by the courts' concern with the hardship that could be caused by sudden termination and dispossession of a tenant where it was not clear that both parties (landlord and tenant) had agreed to such a fluid arrangement.[34] Further, over the course of the nineteenth century, the rule that a lease for an indefinite period gave rise to a tenancy at will was practically swallowed up by exceptions.[35] State statutes also mitigated the harshness of the at-will termination rule by imposing requirements of notice.[36]

Additional protections for the tenant during the development of American landlord tenant law came in the form of limitations placed on a landlord's ability to terminate a tenancy and evict a tenant. States enacted forcible entry and detainer statutes[37] to address the early American common law's potential for violent conflict,[38] which arose because landlords were allowed to engage in self-help, including forcible entry and expulsion of the tenant. [39] These statutes protected a tenant's interest in maintaining possession while providing a landlord with an avenue to evict tenants.[40] The emphasis placed on the security of tenure was also underscored by increasing

---

31. *See* Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 506 (1982).

32. *Id.*

33. This trend contributed to the birth of the concept of "periodic tenancy," which was fully matured by the end of the nineteenth century. *See id.* at 507. Periodic tenancy is "tenancy that automatically continues for successive periods—usu. month to month or year to year—unless terminated at the end of a period by notice." BLACK'S LAW DICTIONARY 712 (9th ed. 2009).

34. Glendon, *supra* note 31, at 507.

35. *Id.*

36. .*Id.*

37. Randy G. Gerchick, No Easy Way Out: Making The Summary Eviction Process A Fairer And More Efficient Alternative to Landlord Self-Help, 41 UCLA L. REV. 759, 776 (1994).

38. *See Act Summary*, *supra* note 2 ("Most police departments list landlord-tenant problems as second only to 'family matters' as a case of violent incidents"); *see also Sheriff's Deputy, Locksmith Killed During Eviction; Body Found in Burned Building*, CNN (Apr. 13, 2012), http://www.cnn.com/2012/04/13/justice/california-deputy-killed.

39. *See* Smith v. Reeder, 28 P. 890, 891 (Or. 1892) ("But, by the decided weight of authority, he [the landlord] may enter and expel the tenant by force, without being liable to an action of tort for damages, either for his entry upon the premises, or for an assault in expelling the tenant, provided he uses no more force than is necessary and does no wanton damage. His title and lawful right to the possession are a complete justification for his entry upon the land, and the tenant, as against him, has no right of occupation whatever."); Gerchick, *supra* note 37, at 775–76 (1994).

40. Gerchick, *supra* note 37, at 778.

case law and legislation that made termination of the tenancy and eviction by the landlord increasingly difficult.[41] For example, summary process statutes often contained provisions for waiting periods or provisions granting the judge authority to grant a stay of the proceedings.[42] In addition, a number of states enacted anti-retaliation statutes or imposed "good cause" or "good faith requirements" to limit a landlord's ability to evict tenants.[43] These developments reflected the primacy of tenants' interest in their homes and the public interest in rental units over landlords' investments.[44]

Another development during the evolution of landlord tenant law that has had significant impact on the equilibrium of landlord tenant relationship is the incorporation of contract principles. From very early on, courts began to criticize leases for their failure to apply enlightened principles of contract law and failure to adapt landlord tenant rules to the times.[45] This dilemma, arguably, stemmed from the recognition that a lease is a conveyance of an interest in land as well as a bilateral contract.[46] By the eighteenth century, the trend was for courts to apply contract principles to leases.[47]

This push to change the basis of landlord tenant law from property law to contract law was central to the thinking of the drafters of URLTA.[48] The drafters acknowledged that at the time URLTA was being developed American landlord tenant law, for the large part, was a product of the English common law, which developed in an agricultural society when contract doctrines were unrecognized.[49] As a result, property law dominated; the parties' covenants were deemed independent and "the landlord-tenant relationship was viewed as a conveyance of a lease-hold estate."[50] Echoing sentiments

41. Glendon, *supra* note 31, at 540–45. This development was at tension with the classical scheme, which recognized that the landlord had the right to possession of the lease premises upon termination of a lease term, a tenancy at will, or periodic tenancy and could refuse to renew the lease for any reason or no reason. *Id.* at 539–40.

42. *See, e.g.*, N.J. STAT. ANN. § 2A:42-10.6 (1957) ("[I]f it shall appear that by the issuance of the warrant or writ the tenant will suffer hardship because of the unavailability of other dwelling accommodations the judge may stay the issuance of the warrant or writ and cause the same to issue at such time as he shall deem proper under the circumstances."). *See also* Glendon, *supra* note 31, at 540.

43. *See, e.g.*, ALA. CODE § 35-9A-142 (2012); COLO. REV. STAT. § 38-12-509 (2013); FLA. STAT. ANN. § 83.44 (2013); OKLA. STAT. tit. 41, § 107 (2013).

44. Glendon, *supra* note 31, at 544 (citing Robinson v. Diamond Hous. Corp., 463 F. 2d 853 (D.C. Cir. 1972)).

45. Lesar, *supra* note 28, at 372.

46. *Id.* at 372–73.

47. *Id.* at 375.

48. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.102 cmt.; *see also* Glendon, *supra* note 31, at 503.

49. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.102 cmt.

50. *Id.* C*f.* Glendon, *supra* note 31, at 505 (stating that "[t]he notion that American landlord-tenant law has evolved from property to contract ignores the long and variegated history of the leasehold estates. This history is that of a hybrid legal institution, neither entirely con-

within the judiciary,[51] URLTA's drafters deemed the application of only property law principles as "inappropriate to modern urban conditions and inexpressive of the vital interests of the parties and the public which the law must protect."[52] Hence, URLTA sought to remove landlord tenant relations from the constraints of property law and incorporate contract principles, which tends to treat the performance of certain obligations of the parties as interdependent.[53]

Today, a debate still exists as to whether American landlord tenant law is governed by contract principles or property law.[54] If landlord tenant law were to be governed by contract principles, as the drafters of URLTA envisioned, "no-fault" eviction statutes permitting a landlord to terminate a lease agreement prematurely would undermine this goal.[55] Moreover, these "no-fault" eviction statutes would subvert reasoned and balanced efforts to limit a landlord's ability to evict a tenant only when the tenant has failed to comply with the terms of his lease.[56] Present data on the devastating impact of evictions dictate the need to curtail unwarranted evictions and promote the security of tenure.

---

tractual nor entirely proprietary. The earliest leases of which we know in the common law systems were not considered real property. That rights under these leases were treated as more contractual than proprietary was only natural since the purpose of the early term of years typically had nothing to do with subsistence or shelter.").

51. *See* Glendon, *supra* note 31, at 503 (stating that opinions of judges were instrumental to the shift from property to contract principles and the alterations in common law of landlord tenant law).

52. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.102 cmt.

53. *See Legislative Fact Sheet*, *supra* note 5. *Cf.* Glendon, *supra* note 31, at 504 (stating that "[l]ease law was never purely property law. By the turn of the century, and up to the 1960s, it was an amalgam of real and personal property principles and of property and contract notions."). Applying contract law to interpret the parties' covenants as interdependent has important practical consequences. For example, when landlord tenant law was dominated by property principles, and covenants were independent, even a material breach by the landlord would not relieve the tenant from paying rent, and the landlord could not retake possession where the tenant breached her rent covenant. The parties were limited to bringing a suit unless a statute or the agreement provided additional rights. By incorporating contract law and the doctrine of mutual dependence of promises in landlord tenant law, lease provisions in the nineteenth century provided for termination of the lease upon default of rent payments by the tenants. Summary eviction statutes also arose that allowed the landlord to expeditiously remove holdover tenants or enforce rights against a tenant in default. *Id.* at 511–12.

54. *See* Tom G. Geurts, *The Historical Development of the Lease in Residential Real Estate*, 32 REAL EST. L.J. 356, 361 (2004).

55. *See supra* notes 46–51 and accompanying text.

56. *See, e.g.*, *supra* notes 2–3 and accompanying text.

III. EVICTION STATISTICS

More Americans are choosing to rent[57] because of the unstable job market,[58] the overall wariness of the housing market,[59] and the inability to obtain mortgages.[60] Currently, more than one-third of the U.S. household population—over 40 million—is comprised of renters.[61] From 2006 to 2011, the percentage of renters increased yearly,[62] from 32.7% in 2006[63] to 35.4% in 2011[64]. Consequently, more Americans have become subject to evictions.

"Each year, an untold number of Americans are evicted or otherwise forced to leave their homes involuntarily."[65] Recent numbers regarding evictions are as dire as older studies reflect. Yet, it has been difficult to gather and estimate eviction figures because no organization collects complete data.[66]

Recognizing the dearth of evidence, and in an effort to bring light to the eviction plight, Chester Hartman, of the Poverty & Race Research Action Council, and David Robinson, of Legal Services for New York City Legal Support Unit, published one of the most comprehensive studies collat-

---

57. NAT'L LOW INCOME HOUSING COAL., HOUSING SPOTLIGHT: RENTERS' GROWING PAIN, 3 (Oct. 2011), *available at* nlihc.org/sites/default/files/HousingSpotlight1-1.pdf [hereinafter RENTERS' GROWING PAIN]; NAT'L LOW INCOME HOUSING COAL., RENTERS IN FORECLOSURE: A FRESH LOOK AT AN ONGOING PROBLEM, 14 (Sept. 2012), *available at* nlihc.org/sites/default/files/Renters_in_Foreclosure_2012.pdf [hereinafter RENTERS IN FORECLOSURE].

58. RENTERS' GROWING PAIN, *supra* note 57, at 3.

59. *Id.*

60. RENTERS IN FORECLOSURE, *supra* note 57, at 14 (Identifying a "marked and potentially long-term downshift in the supply of mortgage credit " as a force behind declining home ownership) (quoting BEN BERNANKE, THE U.S. HOUSING MARKET: CURRENT CONDITIONS AND POLICY CONSIDERATIONS (WHITE PAPER), FED. RESERVE SYS. (2012), *available at* http://federalreserve.gov/publications/other-reports/files/housing-white-paper-201 20104.pdf).

61. U.S. Dep't of Commerce, Physical Housing Characteristics for Occupied Housing Units: 2011 American Community Survey 1-Year Estimates (2011) [hereinafter 2011 ACS], *available at*, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml ?pid=ACS_11_1YR_S2504&prodType=table (last visited Mar. 5, 2013) [hereinafter 2011 ACS].

62. *See* RENTERS' GROWING PAIN, *supra* note 57 (analyzing data from the 2010 American Community Survey); 2011 ACS, *supra* note 61.

63. RENTERS' GROWING PAIN, *supra* note 57. The number of renters increased by almost two percentage points between 2006 and 2010. *See id.* The figures for the four consecutive years are as follows: 32.8% in 2007; 33.4% in 2008; 34.1% in 2009; and 34.6% in 2010. *Id.*

64. 2011 ACS, *supra* note 61.

65. Hartman & Robinson, *supra* note 26, at 461.

66. *Id.*; Interview by Lynn Neary with Matthew Desmond, Sociologist, Univ. of Wisconsin (Feb. 22, 2010), *available at* http://www.npr.org/templates/story/story.php?storyId =123973493 (discussing the topic of black women being evicted at higher rates) [hereinafter NPR Interview].

ing the "scattered available data" on evictions in 2003.[67] Their study revealed the following data. In the 1990s, five percent of all renters in Massachusetts were evicted annually.[68] New York City saw 1.26% of its renters evicted in 2000,[69] and 1.2% of its renters—amounting to 23,647 renter households—evicted in 2001.[70] Evictions in Cleveland amounted to 1.46% of renter households in 2000.[71] In comparison, 5.81% of renter households were evicted in Baltimore that same year.[72] One of the study's reports estimated that almost 10% of San Jose residents were evicted yearly.[73]

A decade later, the numbers remain alarming. A study published in 2012 found "eviction to be a frequent occurrence."[74] The author of this latest report, Professor Matthew Desmond, used Milwaukee (a city of approximately 600,000) as his study sample.[75] His quantitative analysis concluded that sixteen evictions occurred daily,[76] and, on average, an estimated 3.5% of Milwaukee's tenants were evicted yearly.[77]

Scholars have posited that these numbers are misleading, and that, in actuality, the numbers are much greater than what the data reflects.[78] First, they argue that, when estimating evictions figures, one should take into account those tenants that ultimately leave the leased premises "voluntarily" because a landlord has threatened eviction[79]—the tenant leaves because the tenant does not have the time or resources to defend against the landlord's threatened actions.[80]

> A simple notice of an unaffordable or undesired rent increase may trigger a move; a letter from a landlord or managing agent regarding alleged violations of the lease or the law (pets, unauthorized additional tenants, behavioral infractions, etc.) may produce similar results; the landlord

---

67. Hartman & Robinson, *supra* note 26, at 461.

68. *Id.* at 471. The article notes that these evictions were due to the tenant's failure to pay rent, and excluded other reasons for eviction. *Id.*

69. *Id.* at 473.

70. *Id.* at 471–72.

71. *Id.* at 473.

72. *Id.*

73. Hartman & Robinson, *supra* note 26, at 472.

74. Desmond, *supra* note 20, at 91.

75. *Id.*

76. *Id*. at 104.

77. *Id.* at 97.

78. *Id.* at 97–98 n. 8; *see also* Hartman & Robinson, *supra* note 26, at 462–67 (arguing that the eviction figures should include involuntary moves other than through a completed legal process).

79. Hartman & Robinson, *supra* note 26, at 463 ("Tenants move out when the legal process is preceded by a "termination of tenancy" notice from the landlord . . . .").

80. *Id.*

> may refuse to renew the lease; threatening letters from the property owner or from the lawyer representing the owner are often used . . . .[81]

Second, some landlords move beyond threats and proceed with what may amount to illegal strong-arm or self-help tactics.[82] For example, eviction records will not reflect those instances where tenants vacated leased premises because landlords shut off utilities, removed possessions, or simply locked out the tenants.[83]

Third, some landlords who desire to terminate leases dangle what may seem like golden carrots before impoverished tenants. Rather than pursuing an eviction proceeding in court, and to entice the tenants to vacate early, these landlords give the tenants cash for their keys.[84] Professor Desmond reports that one apartment building manager he interviewed often paid tenants $200 to vacate the premises rather than evicting them through judicial proceedings because paying tenants was less expensive than taking them to court.[85] The building manager stated, "For every eviction I do that goes through the courts, there are at least 10 that don't."[86]

Lastly, court records do not fully account for the magnitude of the number of persons being evicted from tenancies.[87] Eviction records only reflect the names of the defendant tenants;[88] as such, there is no method of calculating into the numbers other persons living with the tenants, such as family members or significant others, who are also forced to move from the premises along with the contracting tenant.[89]

Any tenant may be subject to an eviction. However, studies reflect that the vast majority of those who are forced to vacate early are women, minorities, and the poor.[90] Garnering much attention, Professor Desmond's recent

---

81. *Id.*

82. *See* Desmond, *supra* note 20, at 95. States have enacted statutes that preclude landlords from employing self-help tactics. *See, e.g.*, MASS. GEN. LAWS ch. 186, § 14 (2013) (protecting occupants against utility shutoffs, interferences with utilities, non-consensual transfers of payment responsibilities for utilities, and against a lessor or landlord who "directly or indirectly" interferes with quiet enjoyment); FLA. STAT. ANN. § 83.67 (2013) (barring self-help).

83. Hartman & Robinson, *supra* note 26, at 463–64, 466–67; Desmond, *supra* note 20, at 95 ("Off-the-book evictions may account for a significant fraction of landlord-initiated moves.").

84. Desmond, *supra* note 20, at 95.

85. *Id.*

86. *Id.*

87. *Id.*; *see also* Hartman & Robinson, *supra* note 26, at 472.

88. Desmond, *supra* note 20, at 95.

89. *Id.*

90. *See, e.g.*, Hartman & Robinson, *supra* note 26, at 467. It is worth noting that renters earning less than $20,000 a year comprise one-third of the total population of renters. RENTERS' GROWING PAIN, *supra* note 57, at 2.

research of evictions in Milwaukee[91] found that those who were evicted were typically low-income black women.[92] Almost half (46%) of Milwaukee's court-ordered evictions took place in predominantly black neighborhoods.[93] In those neighborhoods, women were more than two times more likely than men to be evicted.[94] Only 9.6% of the city's population is made of black women; yet they accounted for 30% of those evicted.[95]

These statistics are not the least bit surprising. The Hartman and Robinson article revealed similar findings.[96] Their reported studies of major cities, such as New York City, Chicago, Baltimore, Philadelphia, Los Angeles, and Oakland, showed that a disproportionate number of evictions take place in low-income minority households and mostly affect women.[97]

In light of these statistics, there is no doubt that an urgent and compelling need to address the issue of evictions exists. Clearly, some of these evictions are due to tenants' failures to comply with the terms of their leases. To the extent that some of these large numbers of evictions are not caused by the tenants' actions, should they be permitted to occur?

---

91. *See* NPR Interview, *supra* note 66; *New Research Shows High Risk of Eviction for Women in Predominantly Black Neighborhoods*, NAT'L LOW I HOUSING COAL. (Sept. 21, 2012), http://nlihc.org/article/new-research-shows-high-risk-eviction-women-predominantly-black-neighborhoods [hereinafter *High Risk of Eviction for Women*]; Erick Eckholm, *A Sight All Too Familiar in Poor Neighborhoods*, N.Y. TIMES, Feb. 18, 2010, *available at* http://www.nytimes.com/2010/02/19/us/19evict.html?pagewanted=all&_r=0.

92. Desmond, *supra* note 20, at 91, 104. For a thorough discussion of the reasons why evictions may have burdened this population more than others, *see id.* at 105–18.

93. *Id.* at 98, 104. This number amounts to about one in fourteen renter households evicted yearly from black neighborhoods as compared to an approximate one in twenty-five evicted in Milwaukee overall. *See id.* at 97–98; *see also High Risk of Eviction for Women*, *supra* note 88.

94. Desmond, *supra* note 20, at 104.

95. *Id.*

96. Hartman & Robinson, *supra* note 26, at 467.

97. *Id.* Almost one-half of tenants facing eviction in New York City, 86% of which were African-American or Latino, had incomes less than $10,000. *Id.* The majority of tenants evicted in Baltimore were "poor black women." *Id.* In Chicago, 72% were African-American and 62% were women. *Id.* Philadelphia experienced similar numbers—83% nonwhite and 70% nonwhite women. *Id.* (citations omitted).

IV. ANALYSIS OF "NO-FAULT" EVICTIONS—FORECLOSURES, SALES, AND REPOSSESSIONS

A. Foreclosure of Leased Premises

Throughout America "tenants are being evicted from their homes soon after foreclosure of their landlords' properties."[98] It is estimated that renter households account for at least 40% of the families displaced because of foreclosures—an estimate unchanged since 2009.[99] Tenants who entered into lease agreements and dutifully paid their rent were nonetheless forced to vacate the leased premises after foreclosure.[100]

Under the common law, claims regarding priority of interests in real property are governed under the principle of first in time, first in right.[101] For example, a tenant may have entered into a lease agreement with a landlord who had given a mortgage to a lender before the date of the leasehold. Unbeknownst to the tenant, he is not safe in presuming that he will be able to remain on the leased premises if a lender has priority. If the landlord defaults on the pre-existing mortgage, under the first in time, first in right principle, the mortgage trumps the lease and a tenant can readily be evicted.[102] Thus, an innocent tenant would be dispossessed due to a landlord's failure to pay his obligations.[103]

Prior to 2009, most states permitted the purchaser of foreclosed property to terminate an existing lease and evict the tenant.[104] This practice was

---

98. Eloisa C. Rodriguez-Dod, *Stop Shutting the Door on Renters: Protecting Tenants from Foreclosure Evictions*, 20 CORNELL J.L. & PUB. POL'Y 243, 247 (2010) [hereinafter *Stop Shutting the Door on Renters*].

99. RENTERS IN FORECLOSURE, *supra* note 57, at 1, 3. The report noted that the actual number of renters who were impacted by foreclosures tripled between 2008 and 2011. *Id.* at 3.

100. *Stop Shutting the Door on Renters*, *supra* note 98, at 245.

101. United States v. City of New Britain, Connecticut, 347 U.S. 81, 85 (1954). As between a mortgage and a lease on the premises, generally the mortgage is first in time to a residential lease. *Id.*

102. Tenants are generally not aware of this feature of the common law and, thus, do not understand the risks involved when entering into a lease with a landlord who has given a pre-existing mortgage on the leased premises. *Stop Shutting the Door on Renters*, *supra* note 98, at 266.

103. *Id.* at 246. *See also* NAT'L LOW INCOME HOUSING COAL., RENTERS IN FORECLOSURE FACT SHEET, 1 (Jan. 2013), *available at* nlihc.org/sites/default/files/RIF_FS.pdf [hereinafter FACT SHEET].

104. *Stop Shutting the Door on Renters*, *supra* note 98, at 255 n.88. In some states, a foreclosed leasehold is converted into a tenancy at sufferance, a month-to-month tenancy, or a tenancy at will. *Id.* In others, such as Florida, the lease is terminated upon the successful foreclosure if the lender joins the tenant as a plaintiff in the foreclosure action. *Id.* at 260. A few states do not permit foreclosure of a mortgage as a basis for eviction. *Id.* at 263; *see also* MASS. GEN. LAWS ch. 186A, § 2 (2013).

temporarily curtailed by the enactment of the Protecting Tenants at Foreclosure Act of 2009 (PTFA).[105] The PTFA requires a purchaser at foreclosure to provide ninety days' notice to *bona fide* tenants before forcing them to vacate the premises.[106] Furthermore, the PTFA provides the *bona fide* lessee the right to remain on the leased premises until expiration of the existing lease term.[107] Notwithstanding the latter, a purchaser at foreclosure who plans to occupy the property as her primary residence can terminate that right by giving the aforementioned ninety-day notice.[108]

Although the PTFA purportedly affords protections to a tenant caught up in the foreclosure web, it has failed to do so in some major respects.[109] First, the PTFA will sunset on December 31, 2014.[110] Thus, the PTFA protections will no longer be in a tenant's horizon after that date. Tenants will have to revert to whatever state law is in effect at the time of foreclosure. Minnesota Democratic Representative Keith Ellison has twice introduced bills in Congress to extend the PTFA indefinitely; however, in 2011 and 2012, Congress failed to act on the proposed legislation, and the bills died each time.[111] It is expected that Representative Ellison will again reintroduce the Permanently Protecting Tenants at Foreclosure Act before the PTFA

---

105. Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111-22, §§ 701–704, 123 Stat. 1632, 1661 (2009) [hereinafter PTFA].

106. *Id.* § 702(a)(1). The Dodd-Frank Wall Street Reform and Consumer Protection Act clarified that all leases entered into prior to transfer of title of the leased premises to the purchaser at foreclosure are covered under the PTFA. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1484, 124 Stat. 1376, 2204 (2010) [hereinafter Dodd-Frank Act].

107. PTFA § 702(a)(2)(A).

> [A] lease or tenancy shall be considered bona fide only if—
>
> (1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;
>
> (2) the lease or tenancy was the result of an arms-length transaction; and
>
> (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

Id. § 702(b).

108. *Id.* § 702(a)(1).

109. *See infra* notes 109–131 and accompanying text. There has also been criticism of the PTFA as effectuating an unconstitutional taking. *See* Tony S. Guo, *Tenants at Foreclosure: Mitigating Harm to Innocent Victims of the Foreclosure Crisis*, 4 DEPAUL J. FOR SOC. JUSTICE 215, 231-32 (2011); Ngai Pindell, *Home Sweet Home? The Efficacy Of Rental Restrictions To Promote Neighborhood Stability*, 29 ST. LOUIS U. PUB. L. REV. 41, 78 (2009).

110. PTFA, *supra* note 105, at § 704. Its initial expiration was set for December 31, 2012, but was later extended. Dodd-Frank Act, *supra* note 106.

111. Permanently Protecting Tenants at Foreclosure Act of 2010, H.R. 4766 111th Cong. (2010); Permanently Protecting Tenants at Foreclosure Act of 2011, H.R. 3619 112th Cong. (2011).

expires at the end of this Congressional session.[112] Even if it is permanently enacted, the Permanently Protecting Tenants at Foreclosure Act would continue to allow termination of the lease with ninety-days' notice where the purchaser plans to occupy.[113]

Another point of contention with the PTFA is its failure to provide specifically for its enforcement. Reports have cited instances where purchasers at foreclosure—particularly lending institutions that have taken possession at foreclosure—have undermined tenants' rights under the PTFA.[114] Unfortunately, the PTFA does not provide for any institutional oversight. Although the Federal Deposit Insurance Corporation stated that it would "monitor and enforce compliance with the requirements of [the PTFA],"[115] efforts, if any, seem to have failed.[116] The PTFA also failed to include an express private right of action.

The case of *Nativi v. Deutsche Bank National Trust Company* is a prime example of the PTFA's shortcomings.[117] There, Deutsche Bank foreclosed on property leased by two renters, Rosario Nativi and Jose Perez.[118] Nativi and Perez then informed Deutsche Bank's agent that they had a one-year lease on the property;[119] the tenants heard nothing from Deutsche Bank or its agent.[120] Shortly afterwards, while Nativi and Perez were out of town, their belongings were tossed out.[121] When Perez returned, the police were called to bar him from entering the premises.[122] At the time, Nativi and Pe-

---

112. FACT SHEET, *supra* note 103.

113. *See, e.g.*, H.R. 4766 & H.R. 3619, *supra* note 111.

114. *See, e.g.*, Without Justification: Banks Continue Mass Displacement of Innocent Tenants after Foreclosure (Tenants Together, Cal.) Nov. 2010, at 7.

115. *Protecting Tenants at Foreclosure Act: Public Law*, (FDIC) Sept. 28, 2009, *available at* http://www.fdic.gov/news/news/financial/2009/fil09056.html; *see also* RENTERS IN FORECLOSURE, supra note 57, at 11.

116. *See* RENTERS IN FORECLOSURE, *supra* note 57, at 12. The report states:

To fill the role that typically is attributed to a regulator or overseeing entity, nonprofit organizations, including the National Law Center on Homelessness and Poverty (NLCHP), the National Housing Law Project and NLIHC often work with lending institutions and the government sponsored enterprises to ensure that notices and other documents are complaint [sic] with the PTFA. *Id*.

117. Nativi v. Deutsche Bank Nat'l Trust Co., No. 09-06096, 2010 WL 2179885 (N.D. Cal. May 26, 2010).

118. *Id.* at *1.

119. *Id.* The court opinion confirms that the tenants' most current lease at the time the complaint was filed commenced June 1, 2009, and was to terminate June 1, 2010. *Id.* The tenants, in fact, had been renting the property since June 2007. *See NLIHC Joins Amicus Brief Supporting Tenants Evicted in Violation of PTFA*, NAT'L LOW INCOME HOUSING COAL. (Nov. 16, 2012), http://nlihc.org/article/nlihc-joins-amicus-brief-supporting-tenants-evicted-violation-ptfa [hereinafter *NLIHC Joins Amicus Brief*].

120. *Nativi*, 2010 WL 2179885, at *1.

121. *Id.*

122. *Id.*

rez still had ten months remaining on their lease.[123] Deutsche Bank ignored the PTFA and refused to allow the tenants to return to the property for the remaining term of their lease.[124] The tenants sued Deutsche Bank in state court, alleging, among other counts, violation of their rights under the PTFA.[125] Deutsche Bank promptly removed the case to federal court on the basis of federal question jurisdiction.[126]

In a case of first impression, the U.S. District Court dismissed the tenants' claim under the PTFA, holding that the PTFA does not provide for a private right of action, and transferred the case back to the Superior Court of California.[127] The tenants eventually appealed to the California Court of Appeal,[128] and amicus curiae briefs were filed for both sides.[129] One of the questions raised is whether the PTFA creates an ongoing, landlord-tenant relationship for the duration of a lease or merely provides a limited right to continued occupancy and possession of the premises.[130] If the landlord-tenant relationship continues, then the rights of a tenant regarding his occupancy would apply, including the right to sue for violations of the lease on the part of the landlord. As of the date of publication of this Article, resolution of *Nativi* was pending.[131]

After enactment of the PTFA, and in response to the ongoing foreclosure crisis, several states enacted legislation providing similar protections to those found in the PTFA. For example, Maryland enacted legislation permitting tenants to remain on foreclosed property for the remaining term of the lease, unless the purchaser at foreclosure intends to occupy the property as

---

123. *Id.*

124. NLIHC Joins Amicus Brief, supra note 119.

125. *Nativi*, 2010 WL 2179885, at *1.

126. *Id.*

127. *Id.* at *2, *4–5.

128. Nativi v. Deutsche Bank Nat'l Trust Co., No. H037715(Cal. Ct. App. filed Dec. 13, 2011).

129. Brief of Nat'l Hous. Law Project et. al. as Amici Curiae in Support of Appellants, Nativi v. Deutsche Bank Nat'l Trust Co., No. H037715 (Cal. Ct. App. filed Dec. 13, 2011) *available at http://nlihc.org/sites/default/files/Nativi_Amicus_Brief.pdf*; Brief of Am. Legal and Fin. Network as Amicus Curiae Supporting Respondents, Nativi v. Deutsche Bank Nat'l Trust Co., No. H037715 (Cal. Ct. App. filed Dec. 13, 2011).

130. *See* Brief of Am. Legal and Fin. Network as Amicus Curiae in Support of Respondents at 13, 18, Nativi v. Deutsche Bank National Trust Company, No. H037715 (Cal. Ct. App. filed Dec. 13, 2011).

131. However, since the *Nativi* lawsuit was filed, state courts have recognized a private cause of action under the PTFA. *See,* Curtis v. US Bank Nat'l Ass'n, 50 A.3d 558 (Md. 2012); Fontaine v. Deutsche Bank Nat'l Trust Co., 372 S.W.3d 257 (Tex. App. 2012). By contrast, other U.S. District Courts have held that no private right of action exists under the PTFA. *See, e.g.*, Grayham v. Fannie Mae Corp., No. Civ. 11-6194-HO, 2012 WL 89838 (D. Or. Jan. 9, 2012); Ingo v. Deutsche Bank Nat. Trust Co., No. 2:11-cv-812 BCW, 2011 WL 5983340 (D. Utah Nov. 29, 2011).

his primary residence.[132] Massachusetts, likewise, allows for survival of the tenancy after foreclosure.[133] However, Massachusetts provides a lesser degree of protection as it permits eviction where the foreclosing owner has contracted for the sale of the property to a third party, with no requirement that the purchaser intends to occupy the premises.[134]

Most recently, in 2012, California enacted legislation protecting tenants when the lease property is foreclosed.[135] In the case of a fixed-term lease, the statute provides that the tenant "shall have the right to possession until the end of the lease term,"[136] unless the purchaser at foreclosure intends to occupy the premises as his primary residence.[137] Further, California's statute expressly provides that "all rights and obligations under the lease shall survive foreclosure."[138] Thus, in California, a tenant's lease—not just his right to occupy—survives foreclosure and the tenant's legal claims under the lease similarly survive.[139] The PTFA does not expressly include a provision stating that the lease itself survives foreclosure—one of the questions as yet unresolved in *Nativi*.

Although termination of a lease after foreclosure is not inconsistent with property and contract law principles, Congress and the states that have enacted similar protections as the PTFA did so for public policy reasons. Social policy justifications include minimizing disruption for tenants who are innocent victims of foreclosure and simply caught in the crossfire.[140] As poignantly described by Sen. John Kerry during the passage of PTFA: "A landlord should not be allowed to come in . . . and force out tenants who were there completely legitimately, with an expectation that they were coming home to their same old home."[141]

Should the Committee include provisions in RURLTA to protect tenants in foreclosed properties? If so, should RURLTA expressly provide language to the effect that all the rights under the lease survive foreclosure? Should it also expressly provide that a tenant aggrieved by a violation of the protective measures in the statute has a right to bring a civil action? Should such an express right of action also expressly provide that the tenant bringing such action has a right to obtain any appropriate equitable or declaratory

---

132. MD. CODE ANN., REAL PROP. § 7-105.6 (LexisNexis 2008).
133. MASS. GEN. LAWS ch. 186A, § 2 (2008).
134. *Id.*
135. CAL. CIV. PRO. CODE § 1161b (West 2013). This statute will sunset on December 31, 2019. *Id.* § 1161b(f).
136. *Id.* § 1161b(b).
137. *Id.* § 1161b(b)(1).
138. *Id.* § 1161b(b).
139. See id.
140. *See Stop Shutting the Door on Renters*, supra note 98, at 246, 248, 250.
141. 155 CONG. REC. S5111 (daily ed. May 5, 2009) (statement of Sen. Kerry in discussing the PTFA).

relief and recover appropriate monetary damages, costs, and reasonable attorneys' fees?

B. Sale of Rental Property

Under property and contract law principles, foreclosure terminates an existing lease because of a lender's priority in interest.[142] By contrast, under property and contract law principles, a landlord's sale of the leased premises to a third party does not automatically terminate an existing lease, absent an express provision in the contract.[143] The new owner will take possession subject to the lease that was in place until, or unless, both the new owner and the tenant agree to changes.

However, in its September 2012 draft of RURLTA, the Committee included a provision—section 701(d)(1)—that would permit a landlord to terminate a tenancy if the landlord "accepted an offer to purchase the dwelling unit from an individual who intends in good faith to occupy the dwelling unit as the individual's primary residence."[144] That provision was included in Article Seven titled "Termination of Periodic Tenancy, Death of a Tenant, Holdover Tenancy, Abuse of Access."[145] Both the January 2013 and April 2013 drafts of RURLTA excluded this provision.[146] It is unclear whether the Committee intends to resuscitate this provision in a separate section on evictions,[147] include this provision in the section on retaliatory conduct by the landlord, or omit the provision altogether.

Allowing a landlord to terminate a lease because he wants to sell the premises may be based on state laws that deem such actions as defenses to claims of retaliatory evictions. For example, in Hawaii and Delaware, a landlord may recover possession of the leased premises where he has entered into a contract in "good faith" for the sale of the leased premises.[148] In

142. For public policy reasons, the PTFA and states override those principles by providing tenants some relief. *See* PTFA § 702.

143. Kirk Corp. v. First American Title Co., 270 Cal. Rptr. 24, 38 (Ct. App. 1990).

144. September 2012 RURLTA Draft, *supra* note 1, § 701(d)(1).

145. *Id.* art. 7.

146. *See* January 2013 RURLTA Draft, *supra* note 1; April 2013 RURLTA Draft, *supra* note 1.

147. *See supra* note 14 and accompanying text.

148. HAW. REV. STAT. § 521-74(b)(6) (2013) (stating that a landlord may rebut the presumption of retaliation and "may recover possession of the dwelling unit if … [t]he landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser [that the purchaser desires to occupy the property or alter, remodel, or demolish the unit]"); DEL. CODE ANN. tit. 25, § 5516(d)(7) (2009) (stating that landlord has a defense to a claim of retaliation where the "landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser [that the purchaser desires to occupy the property or alter, remodel, or demolish the unit or remove the unit from the rental market].").

each of those states' provisions, the contract must contain a representation by the purchaser regarding her intent to move into the premises.[149] These provisions differ from those provided for in the District of Colombia, which grants tenants the right of first refusal before the landlord can sell to a third party.[150]

The District of Colombia specifically permits a landlord to repossess leased premises where he has a written contract for the sale of the property and the new owner desires to immediately occupy the unit.[151] There are a number of protections that the District of Columbia has put in place in this scenario. For instance, the landlord must give the tenant ninety days' notice prior to an action to repossess the property, and must proceed in good faith.[152] Most importantly, the tenant has a right of first refusal.[153] Before the landlord can sell the property, the tenant must be notified in writing of her right and opportunity to purchase the rental unit.[154] Indeed, this right is specifically provided for in the Tenants' Opportunity to Purchase Act ("TOPA").[155]

TOPA not only gives tenants a right of first refusal, but it also entitles them to assign their rights to a third party.[156] If the rental unit is a single-family home, the tenant must notify the landlord of her interest in purchasing the property within thirty days of the landlord's offer.[157] If the tenant expresses her interest in writing, the landlord must allow an additional sixty days for negotiation of the contract.[158] For every day the owner of the unit delays, a day is added.[159] The tenant must also be given at least sixty days to arrange financing.[160] For accommodations of two to four units, TOPA also delineates the amount of time that tenants must be given.[161] And if the building has five or more units, in order to make a contract of sale with the owner, the tenants must form a tenant organization, the characteristics of which are outlined in the statute.[162]

---

149. HAW. REV. STAT. § 521-74(b)(6) (2013); DEL. CODE ANN. tit. 25, § 5516(d)(7) (2012).

150. *See* Tenants' Opportunity to Purchase Act, D.C. CODE § 42-3404.02(a) (2013) [hereinafter TOPA].

151. D.C. CODE § 42-3505.01(e) (2001).

152. *Id.*

153. *Id.*

154. *Id.*

155. TOPA § 42-3404.02(a).

156. *Id.* §§ 42-3404.02(a), 3404.06.

157. *Id.* § 42-3404.09(1).

158. *Id.* § 42-3404.09(2).

159. *Id.*

160. *Id.* § 42-3404.09(3).

161. TOPA § 42-3404.10.

162. *Id.* § 42-3404.11.

If RURLTA includes a provision allowing a landlord to repossess leased premises simply by entering into a contract for sale, would the landlord, in effect, be converting a tenancy for a fixed term to a tenancy at will? Clearly this should not be allowed. If a landlord wants the option of prematurely terminating a lease upon sale of the property, the landlord could conceivably negotiate and include a provision in the lease to that effect. What if, however, rather than prematurely terminating the lease, a landlord instead simply decides not to renew the lease because he wants to sell? There is no question a landlord would be allowed to do so unless he is using this as a subterfuge against the prohibition on retaliatory evictions.[163]

C. Re-occupancy by Landlord

Retaliatory eviction refers to a certain conduct by a landlord that has the effect of forcing a tenant to vacate the premises at the end of the lease term, commonly in month-to-month leases. For example, a landlord may raise the monthly rent, reduce services, or refuse to renew a lease.[164] A landlord is prohibited from taking such action if the motive is in retaliation for a tenant asserting certain legal rights, such as complaining to housing authorities regarding code violations.

Retaliatory eviction gained recognition in the seminal case of *Edwards v. Habib*.[165] In that case, a month-to-month tenant had reported "to the Department of Licenses and Inspections of sanitary code violations which her landlord had failed to remedy."[166] Thereafter, the landlord served the tenant with the requisite thirty-day notice of termination (or nonrenewal) of the lease.[167] Upon the tenant's failure to surrender the premises, the landlord obtained a judgment for possession.[168] The tenant then successfully moved, in a hearing, to set the judgment aside on the basis that the landlord's "notice to quit was given in retaliation for her complaints to the housing authorities."[169] However, at trial, another judge held that evidence of a retalia-

163. *See, e.g.*, Edwards v. Habib, 397 F.2d 687, 699 (D.C. Cir. 1968).

164. The term retaliatory eviction is actually a confusing misnomer. The landlord's conduct, itself, is what is retaliatory. An eviction is only necessitated, for example, if the tenant does not pay the increased rent or refuses to surrender the premises upon nonrenewal of the lease. However, because a landlord's retaliatory conduct so often leads to evictions, the retaliatory actions themselves are basically deemed to be in the nature of an eviction. A tenant may use retaliatory eviction as a defense against eviction or as grounds for a cause of action against a landlord before the landlord institutes any eviction proceeding.

165. 397 F.2d 687 (D.C. Cir. 1968).

166. *Id.* at 688.

167. *Id.* at 689.

168. *Id.*

169. *Id.*

tory motive was "irrelevant" to a landlord's action to possession of leased premises.[170] On appeal, the court stated that:

> [I]n making his affirmative case for possession [a] 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.*[171]

The court was addressing the landlord's retaliatory conduct (nonrenewal of the lease), which consequently led to the tenant's eviction when the tenant refused to vacate the premises.[172]

When URLTA was promulgated a few years later, NCCUSL included a section on retaliatory conduct.[173] With certain exceptions, URLTA § 5.101 prohibited retaliatory evictions as follows:

> (a) [A] landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
>
> > (1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or
> >
> > (2) the tenant has complained to the landlord of a violation under Section 2.104 [landlord's duty to maintain premises]; or
> >
> > (3) the tenant has organized or become a member of a tenant's union or similar organization.[174]

---

170. *Id.*

171. *Edwards*, 397 F.2d at 699 (emphasis added).

172. Courts and legislatures that thereafter adopted retaliatory eviction as a defense to a landlord's action for possession additionally viewed other conduct on the part of the landlord as retaliatory. *See, e.g.*, MASS. GEN. LAWS ch. 186, § 18 (1969) (landlord increases rent or substantially alters terms of tenancy with retaliatory motives); Aweeka v. Bonds, 97 Cal. Rptr. 650 (1971) (where landlord raised rent to amount landlord knew tenant could not afford after month-to-month tenant complained about needed repairs).

173. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101. In doing so, NCCUSL cited to several states that had recognized the defense of retaliatory eviction in case law and statutes. *Id.* § 5.101 cmt.

174. *Id.* § 5.101(a).

Nevertheless, a landlord was permitted to bring a cause of action for possession of the premises if:

> (1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other person on the premises with his consent; or
>
> (2) the tenant is in default in rent; or
>
> (3) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.[175]

In its recent revision of URLTA, the Drafting Committee has added several additional grounds upon which a landlord may retake possession notwithstanding the prohibition on retaliatory evictions, two of which are unrelated to a tenant's conduct:[176]

> (8) the landlord seeks in good faith to recover possession of the unit for immediate use as the primary residence of the landlord or the landlord's parent, spouse, child, or sibling.[177]

---

175. *Id.* § 5.101(c).

176. The other proposed grounds are:

> (2) the tenant's conduct under subsection (a) was made in an unreasonable manner, at an unreasonable time, or was repeated in a manner having the effect of harassing the landlord;
>
> . . . .
>
> (4) the tenant, an immediate family member, or other person on the premises with the tenant's consent, other than the landlord or the landlord's agent, engaged in conduct that presents a threat to the health or safety of another tenant of the dwelling unit or another dwelling unit on the premises;
>
> (5) the tenant, an immediate family member, or other person on the premises with the tenant's consent, other than the landlord or the landlord's agent, used the premises or the unit for an illegal purpose;

April 2013 RURLTA Draft, *supra* note 1, § 901(c)(2), (4)–(5).

177. *Id.* § 901(c). Subsection 901(c)(6) was added in the April 2013 draft of RURLTA. The January 2013 draft of the RURLTA did include a provision permitting a landlord to recover the leased premises where "the landlord seeks in good faith . . . [to] use [the premises] as the landlord's primary residence." January 2013 RURLTA Draft, *supra* note 1, § 802(b)(6). The April 2013 draft of RURLTA expanded the proposed provision to permit repossession of the dwelling unit for use as the primary residence of not only the landlord but also "the landlord's parent, spouse, child, or sibling." April 2013 RURLTA Draft, *supra* note 1, § 901(c)(8). In contrast to the provision that had been questionably added to the September 2012 draft of RURLTA, permitting landlords to repossess the premises for sale to a third party, *see supra* notes144–151 and accompanying text, the proposed provision permitting recovery for the landlord's own use was included where it should be—if at all—in the section regarding retaliatory evictions. *Id.*

Jurisdictions that permit a landlord to repossess the leased property for his own use and occupancy often attach a specific good faith requirement to the exercise of this right. Connecticut, for example, specifically requires this.[178] The Connecticut statute also includes a temporal requirement—the landlord must seek to repossess the unit for "immediate use as his own abode."[179]

In New York, the landlord must show good faith in addition to an "immediate and compelling necessity" to repossess the leased premises for his or his family's occupancy and personal use.[180] The New York statute specifically enumerates which family members fall within the purview of the statute.[181] These include the landlord's spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law.[182]

The proposed language in the April 2013 draft of RURLTA does not include any specific good faith requirement. However, the draft does incorporate a generalized duty to act in good faith.[183]

Even with a good faith requirement, permitting termination of a lease so that a landlord may move in would significantly circumvent the prohibition on retaliatory evictions. On balance, would the benefit of such a provision for landlords be outweighed by the potential of increased evictions? Should the landlord's desire to move in trump the tenant's right to rely on the validity and duration of his tenancy?

---

178. CONN. GEN. STAT. ANN. § 47a-20a(a)(2) (West 2013).

179. *Id.*

180. N.Y. RENT & EVICT § 2104.5(a)(1) (McKinney 2013).

181. *Id.* § 2104.5(a)(1); *accord.*, SANTA MONICA RENT CONTROL LAW, § 1806(a)(8) (2013) ("The landlord seeks to recover possession in good faith for use and occupancy by herself or himself, or her or his children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law . . . No eviction may take place if any landlord or enumerated relative already occupies one unit on the property, or if a vacancy already exists on the property and the vacant unit is comparable to the unit for which eviction is sought. Where the vacant unit is determined not to be comparable, thereby permitting eviction under this Subsection, the evicted tenant or tenants shall be first given the right to occupy the vacant unit and the rent thereof shall be the lesser of the maximum allowable rent for the vacant unit and the maximum allowable rent of the unit from which the tenant or tenants are evicted … The landlord or enumerated relative must intend in good faith to move into the unit within thirty (30) days after the tenant vacates and to occupy the unit as a primary residence for at least one year.").

182. NY RENT & EVICT § 2104.5(a)(1).

183. April 2013 RURLTA Draft, *supra* note 1, § 105. "Every duty under this [act] and every act that must be performed as a condition precedent to the exercise of a right or remedy under this [act] imposes an obligation of good faith in its performance or enforcement." *Id.* Good faith is defined as "honesty in fact and the observance of reasonable commercial standards of fair dealing." *Id.* § 102(20). URLTA has a similar overall good faith requirement. UNIF. RESIDENTIAL LANDLORD &TENANT ACT §§ 1.301(4), 1.302.

The *Edwards v. Habib* court acknowledged that a tenant is not "entitled to remain in possession in perpetuity."[184] Subsection 901(c)(6) of the April 2013 RURLTA draft clearly permits a landlord to "evict [a tenant] for any legal reason or for no reason at all,"[185] as long as the landlord's motives are not retaliatory in nature. Under that subsection, a landlord need only give the tenant any required notice to vacate "before the tenant engaged in an activity described in subsection (a)."[186]

However, inclusion of subsection 901(c)(8) in RURLTA would suggest that a landlord who has retaliatory motives may terminate a tenancy under the guise of moving in. One could argue that the landlord is bound by the overall duty of good faith found in section 105.[187] Unlike subsection 901(c)(6), subsection 901(c)(8) has no restrictive language, other than a landlord's desire that the property be occupied by himself or his family.[188] Because the Drafting Committee excluded from the latter any specific prohibition against retaliatory motives, it would seem that the duty of good faith applies only to a landlord's affirmative action of personally occupying the premises. Thus, a landlord would be permitted to repossess the property notwithstanding any retaliatory motives. Otherwise, if a landlord had purely good motives, a landlord could rely on subsection 901(c)(6) to terminate the tenancy.

D. Policy Issues

Should a tenant, who has complied with all the terms of her lease, not have the right to remain on the leased premises beyond foreclosure, sale of the property, or the landlord's desire to move in? Should RURLTA provide rights and remedies for tenants caught in these "no-fault" situations?

URLTA is a "model" act on which a number of states have based their landlord-tenant law.[189] As a specific objective, URLTA intended to remove "the landlord and tenant relationship from the constraints of property law and establish[] it on the basis of contract law with all the concomitant rights and remedies."[190] "No-fault" eviction statutes would be counterproductive to this goal. Rather than abiding by the fundamental contract principle that parties are bound to comply with the terms of a valid agreement and the fundamental property principle that a landlord is required to give possession to the tenant for the duration of the lease term, "no-fault" evictions would

184. Edwards v. Habib, 397 F.2d at 702.
185. *Id.* at 699.
186. April 2013 RURLTA Draft, *supra* note 1, § 901(c)(6).
187. *Id.* § 105.
188. *See id.* § 901(c)(6), (8).
189. *See supra* note 5 and accompanying text.
190. Legislative Fact Sheet, *supra* note 5.

basically allow landlords to treat their lease arrangement as tenancies at will—permitting unilateral termination of a valid lease agreement. Yet, RURLTA seeks to abolish tenancies at will.[191]

"No-fault" evictions erode the principles of security of tenure. Hardships to families who would face "no-fault" evictions cannot be overstated. A displaced tenant may not have the financial resources to move elsewhere.[192] Displacement may trigger loss of employment if a tenant cannot find replacement housing near her work. An eviction also may affect a tenant's credit history, which consequently results in the tenant's inability to obtain other housing, employment, or credit.[193]

Evictions are not only financially costly but also are psychologically and socially taxing. Studies have shown that uprooting a tenant from her community may result in severe mental issues.[194] Evictions of families with children can have a negative impact on a child's education, as it may require changing schools.[195] Permitting "no-fault" evictions would likely serve to increase the number of displaced tenants and would likely continue to disproportionately affect women, minorities, and the poor.[196]

Yet, one may argue that a landlord should have the freedom to use or dispose of property that she owns where safeguards put in place by the government are met. States generally impose a good faith requirement in the

---

191. September 2012 RURLTA Draft, *supra* note 1, § 201 cmt.; January 2013 RURLTA Draft, *supra* note 1, § 201 cmt.; April 2013 RURLTA Draft, *supra* note 1, § 201 cmt.

192. *Stop Shutting the Door on Renters, supra* note 98, at 245 n.20 and accompanying text.

193. *See* D. James Greiner, Cassandra Wolos Pattanayak & Jonathan, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 914 (2013) ("A court-ordered eviction, particularly one for nonpayment of rent, can affect a tenant's credit rating and thereby the tenant's access to the credit and rental markets after the eviction.").

194. Stanislav V. Kasl, *Physical and Mental Health Effects of Involuntary Relocation and Institutionalization on the Elderly*, AM. J. PUB. HEALTH (Mar. 1972), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1530073/pdf/amjph00725-0059.pdf. *But see* Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093, 1115 (2009) ("If homes are critical to human flourishing, as personhood theory suggests, we would expect to see psychological studies finding long-term mental health harms from involuntary relocation. The research suggests otherwise. Psychologists and sociologists have studied the mental health impacts of relocation extensively. The weight of the evidence indicates that residential mobility, even forced relocation, causes short-term stress but typically does not affect long-term psychological functioning. In general, people are highly adaptive to geographic change and typically return to pre-mobility levels of satisfaction in relatively short order.").

195. *See generally* Rebecca Cohen & Keith Wardrip, *Should I Stay or Should I Go?: Exploring the Effects of Housing Instability and Mobility on Children*, CTR. FOR HOUSING POL'Y (Feb. 2011), *available at* www.nhc.org/media/files/HsgInstablityandMobility.pdf.

196. *See generally supra* Part III.

landlord-tenant relationship.[197] In instances of "no-fault" eviction, this requirement would need to be particularly emphasized.

For example, federal and state laws do not impose a good faith requirement when a tenant is evicted as a consequence of a foreclosure and the purchaser at foreclosure wishes to occupy the property; generally, the statutes only refer to a purchaser's intent to occupy the premises as her primary residence.[198] But who is enforcing compliance with the intent requirement? Will intent always result in actual occupancy as a residence? Unfortunately, most governmental agencies simply do not have the resources to devote to policing the execution of this policy.

Adequate notice to the tenant of the termination of the lease is a factor that generally mitigates arguments of unfairness or hardship. Recognizing the inconvenience to tenants, several states and municipalities have required a minimum sixty-days' notice for "no-fault" evictions,[199] thus providing tenants time to find a new place to live.[200] These arguments ignore the fact that

> time is not the only issue confronting these tenants. Ninety days (or even longer) may not be sufficient time for tenants to come up with the financial resources required to effectuate a move into comparable housing. . . . [T]he law may simply be giving tenants more time in their current premises with nowhere to go when they are eventually evicted.[201]

Arguments in favor of "no-fault" eviction could be buttressed if legislation provided monetary assistance for relocating tenants. For example, the

---

197. *See, e.g.*, ALA. CODE § 35-9A-142 (2013); FLA. STAT. ANN. § 83.44 (2013); OKLA. STAT. tit 41, § 107 (2012).

198. *See, e.g.*, PTFA § 702; MASS. GEN. LAWS ch. 186A, § 2 (2008).

199. *See, e.g.*, CAL. CIV. CODE § 1946.1 (2013) (sixty days notice, generally, and thirty days for tenancies of less than year); D.C. CODE §§ 42-3505.01(d)–3505.01(e) (2013) (ninety days notice in advance of action for repossession).

200. When California increased its statutory notice period from thirty to sixty days, evidence was introduced showing that the extended timeframe saves landlords money by eliminating the need to file eviction proceedings, as most tenants will move when given enough time to do so. *60-Day Notice for No-Fault Evictions Now Permanent*, SANTA MONICA RENT CONTROL BOARD, http://www.smgov.net/Departments/Rent_Control/Information_and_FAQ/Newsletters/60-Day_Notice_for_No-Fault_Evictions_Now_Permanent.aspx (last visited Mar. 5, 2013).

201. *Stop Shutting the Door on Renters*, *supra* note 98, at 253–254 (noting that a move to another leased premises will generally require a security deposit in addition to first and last months' rent). In the current economic climate with a depressing job market, two months may not be sufficient time to find a new job. *See, e.g.*, *US Weekly Jobless Claims Rise More Than Expected*, REUTERS (Feb 21, 2013), *available at* http://www.reuters.com/article/2013/02/21/idUSLNSLDE92120130221. Furthermore, in some cases, tenants are subject to a shorter notice period. For example, a tenant with a lease for less than one year does not receive the benefit of California's sixty-day notice rule for evictions. CAL. CIV. CODE § 1946.1.

Santa Monica Municipal Code (in the context of rent control) provides relocation assistance for tenants, including those evicted because the landlord repossessed the property for occupancy by the landlord or her family.[202] In 2011, amounts ranged from $7,800.00 for a single bedroom to $16,300.00 for two or more bedroom apartments.[203] If the displaced tenant were a senior citizen or a disabled person, she would obtain an augmented amount between $8,900.00 and $18,750.00.[204] Tenants in the District of Columbia may also receive similar monetary assistance.[205] But, these payment amounts may be inadequate where the tenant is forced to accept housing in distances farther than where he was residing or in an area that is more costly. In addition, relocation assistance is typically paid on a per unit basis as opposed to per occupant basis.[206] Thus, any such assistance generally neglects to account for other members in the tenant's household.[207]

Notice provisions and modest legal remedies cannot cure the extreme hardships that tenants experience as a result of "no-fault" evictions. Most tenants may not be in a financial position to assert their legal rights and obtain legal remedies. Most tenants face evictions without legal representation,

---

202. SANTA MONICA, CAL., MUN. CODE § 4.36.020 (2013), *available at* http://qcode.us/codes/santamonica/.

203. *Id.* § 4.36.040.

204. *Id.*; *see also* S.F., CAL. RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE ch. 37, § 9C (2013) ("Tenants Rights to Relocation for No-Fault Evictions").

205. D.C. CODE § 42-3507.03 (2013). Some have noted that other remedial statutes, such as TOPA, work out to be a monetarily valuable benefit to tenants. As the D.C. Court of Appeals aptly stated, under TOPA, tenants

> "receive a significant and tangible benefit from the legislation. As a result of the statute's enactment," . . . tenants "have something of value—assignable TOPA rights [of first refusal]—for which a prospective assignee is likely to be willing to pay, and in many cases has paid, in order to acquire the property."
> . . . [I]t "strengthen[s] the bargaining position of tenants . . . ."

Richman Towers Tenants' Ass'n, Inc. v. Richman Towers, 17 A.3d 590, 619 (D.C. 2011) (citations omitted).

> In many cases, especially involving buildings with many tenants, tenants have sold their rights to developers. In exchange for these tenant rights, the new developer converts the property into a condominium or a cooperative. The developer gives cash to each tenant who decides to vacate the property or a substantial discount if that tenant opts to purchase a unit.

Benny L. Kass, *D.C. Landlords Must Give Tenants a Chance to Buy Property*, WASH. POST, July 17, 2004, at F03, *available at* http://www.washingtonpost.com/wp-dyn/articles/A54955-2004Jul16.html.

206. *See*, *e.g.*, Kass, *supra* note 205.

207. For example, where a tenant and her spouse have to move to a new location that does not make sharing a vehicle feasible, they may have to purchase a new vehicle or pay additional transportation costs; the modest amounts allowed for in relocation statutes may not be sufficient to offset these added expenses. However, additional compensation may be given when the tenant lives with a minor child. *See* SANTA MONICA, CAL., MUN. CODE § 4.36.040.

thus having a greater likelihood of losing their case.[208] Parties who are represented by legal counsel in court generally obtain better results against those that are acting pro se.[209] Low-income families often encounter difficulties in securing legal representation in eviction actions.[210] The disparate financial position of the parties creates an unfair advantage in favor of landlords, who will most likely be able to afford legal counsel and secure better results.

Another troubling and pressing factor is to what extent tenants are aware of, or understand, their rights under protective eviction statutes such as PTFA.[211] Safeguards may be bypassed because there is arguably no governmental institutional supervision and limited means by which tenants may enforce their rights, thereby permitting the exploitation of those socially and economically disadvantaged tenants, whom these provisions intend to protect.

V. RECOMMENDATIONS AND CONCLUSION

There are arguments both for and against "no-fault" evictions. Some may posit that landlords should be able to evict tenants on "no-fault" bases for economic and equitable reasons. A landlord who is offered a fair or above-market price for his unit, and who stands to profit from a sale to a third party who wants to occupy the premises, should not be restricted from doing so. Additionally, there are conceivably a number of reasons why a landlord may need to move back into the leased premises. Perhaps the landlord or a member of her family becomes unemployed, is unable to meet her living expenses, and needs to move back to avoid homelessness. Similarly, the landlord may need to re-occupy the leased premises to be in closer proximity to an ailing parent or sibling.

However, equity compels that the scale tip in favor of the tenant when balancing a landlord's autonomy against societal goals. One cannot escape the fact that unexpected involuntary relocations may be an economic and emotional burden.[212]

---

208. Hartman, *supra* note 26, at 477.

209. *Id.*

210. *See* Desmond, *supra* note 20, at 123 (stating that "increased access to free legal counsel would decrease evictions.").

211. *See* RENTERS IN FORECLOSURE, *supra* note 57, at 9–10.

212. *See supra* notes 169–172 and accompanying text. Such personal hardship includes, but is not limited to: economic loss, time loss, physical and emotional stress, and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from strain of eviction controversy; relocation search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; employment, education, family and social disruption; relocation and empty unit security hazards; relocation to premises of less affordability, capacity, accessibility and physical or environmental quality; and

> It is in the public interest of the State to maintain for citizens the broadest protections available under State eviction laws to avoid such displacement and resultant loss of affordable housing, which, due to housing's uniqueness as the most costly and difficult to change necessity of life, causes overcrowding, unsafe and unsanitary conditions, blight, burdens on community services, wasted resources, homelessness, emigration from the State and personal hardship, which is particularly severe for vulnerable seniors, the disabled, the frail, minorities, large families and single parents.[213]

Moreover, the integrity of contract rights suggests disallowing "no-fault" evictions. The challenge for the Drafting Committee in drafting RURLTA, and for legislators, will be to provide a fair method when addressing this issue.

As to foreclosures, RURLTA should consider adopting provisions similar to those found in the PTFA and similar legislation.[214] A lease should survive a foreclosure of leased property, without exception.[215] The lease should continue for the duration of the lease term. If, however, the lease subject to foreclosure would have allowed the tenant to remain on the property for several more years, the proposal could limit the lease after foreclosure to a one-year term. Although this may effectuate an early termination of longer-term leases, it provides an equitable remedy for both parties.

On the other hand, if the lease subject to foreclosure has a short term remaining on the lease (*e.g.*, 45 days), the proposal may allow the tenant additional time if the tenant had previously renewed the lease on a year-to-year basis or where there was otherwise a reasonable expectation of renewal. All such protective measures should apply only to *bona fide* tenants, i.e., tenants who entered into arms' length lease agreements. RURLTA may consider adopting the term *bona fide* as defined under the PTFA.[216]

A lease should likewise survive the sale of the leased premises to a third party. First, a prospective purchaser presumably should have implied notice of the existing lease. Second, under fundamental property principles, a property owner cannot convey more than he has. Therefore, when a landlord sells leased property, he conveys subject to any existing lease. Thus,

---

relocation adjustment problems, particularly of the blind or other disabled citizens. N.J. STAT. ANN. § 2A:18–61.1a(e) (2013).

213. N.J. STAT. ANN. § 2A:18–61.1a(d).

214. Sheila Crowley, President and CEO of the National Low Income Housing Coalition, was quoted as stating the following in regards to the PTFA: "Extending [it] now and giving it teeth is the most important things we can do to keep renters in their homes [through] foreclosures." *Bill Introduced to Make PTFA Permanent*, NAT'L LOW INCOME HOUSING COAL. (Dec. 9, 2011), *available at* http://nlihc.org/article/bill-introduced-make-ptfa-permanent.

215. RURLTA should not include the exception in PTFA that terminates the lease if the purchaser in foreclosure intends to occupy the premises.

216. *See* PTFA, *supra* note 104, § 702(a)(2)(A).

RURLTA should not permit eviction under these circumstances. Of course, some landlords might wish to circumvent this by including an express provision in the lease that the lease terminates upon the sale of the property to a third party. To prevent such occurrences, it is recommended that any such provision in a residential lease be unenforceable. A landlord who entered into a lease agreement (often a one-sided agreement generally drafted by the landlord with little or no tenant input) should not be able to unilaterally rescind that agreement. Tenants should be permitted to obtain the benefit of the bargain. Thus, tenants who comply with lease terms would be able to remain on the premises with all of the rights and obligations under their existing leases.[217]

Likewise, RURLTA should also prohibit a landlord from terminating a tenancy and evicting a tenant for the purpose of occupying the premises if the landlord has retaliatory motives. "[F]or reasons of public policy, such an eviction cannot be permitted."[218]

RURLTA should provide for a private cause of action, allowing tenants to sue in the event of a violation of these provisions in order to prevent landlords from circumventing the provisions protecting tenants in foreclosures, and prohibiting the termination of leases for sale or re-occupancy. Additionally, it is recommended that monetary penalties be imposed where new owners or landlords act in bad faith. Regulating "no-fault" evictions ensures against erosion of one of URLTA's initial goals—the security of tenure for tenants.[219]

---

217. Nothing in these prohibitions prevents a landlord, who wishes to terminate the lease to personally occupy it or sell it, from negotiating with the tenant. The landlord could always offer to buy out the remaining term of the tenant's lease.

218. Edwards v. Habib, 397 F.2d at 699.

219. *See supra* note 3 and accompanying text.