



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 6

2013

Then and Now: The Uniform Residential Landlord and Tenant Act and the Revised Residential Landlord and Tenant Act - Still Bold and Relevant?

Lawrence R. McDonough

Follow this and additional works at: <https://lawrepository.ualr.edu/lawreview>



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

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. 975 (2013).

Available at: <https://lawrepository.ualr.edu/lawreview/vol35/iss4/6>

This Article is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in University of Arkansas at Little Rock Law Review by an authorized editor of Bowen Law Repository: Scholarship & Archives. For more information, please contact mmserfass@ualr.edu.

THEN AND NOW: THE UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT AND THE REVISED RESIDENTIAL LANDLORD AND TENANT ACT—STILL BOLD AND RELEVANT?

*Lawrence R. McDonough**

I. INTRODUCTION

In 1972, the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (“ULC”), created the Uniform Residential Landlord and Tenant Act (“URLTA” or the “Act”), with almost universal acknowledgement from legal commentators that it reshaped the balance of power in landlord and tenant relations.¹ Over forty years later, the ULC is considering adopting the Revised Residential Landlord and Tenant Act (“Revised Act”),² and has appointed a Drafting Committee to make such revisions.³ While the first draft of the Revised Act recognizes important developments in landlord and tenant law,⁴ there are important issues in the Revised Act that have been unchanged or unaddressed

* Pro Bono Counsel, Dorsey and Whitney, LLP; Former Managing Attorney, Housing Unit, Minneapolis Office, Mid-Minnesota Legal Aid; Adjunct Professor of Law, University of Minnesota Law School and University of St. Thomas School of Law; Former Visiting Clinical Professor of Law, Hamline University School of Law and University of Minnesota Law School; Former Adjunct Professor of Law, William Mitchell College of Law; J.D., cum laude, William Mitchell College of Law (1983). Professor McDonough has practiced housing and consumer law since 1986. He was an Observer to the ULC Study Committee on a Revision of the Uniform Residential Landlord and Tenant Act, and now serves as an Observer to the Drafting Committee on a Revised Residential Landlord and Tenant Act. A full biography is available at <http://povertylaw.homestead.com>. The author thanks University of Virginia School of Law student Matthew Jobe for his research assistance.

1. See discussion *infra* at Part III.C.

2. *Residential Landlord and Tenant Act Committee*, UNIF. LAW COMM’N, <http://www.uniformlaws.org/Committee.aspx?title=Residential%20Landlord%20and%20Tenant%20Act> (last visited Apr. 17, 2013).

3. *Id.*

4. See REVISED UNIF. RESIDENTIAL LANDLORD AND TENANT ACT (Draft for Discussion Only, Sept. 17, 2012), http://www.uniformlaws.org/shared/docs/Residential%20Landlord%20and%20Tenant/2012sep17_URLTA_MtgDraft.pdf; see discussion *infra* Part IV. Note that the ULC Drafting Committee released subsequent drafts on January 28, 2013 (February 2013 Meeting Draft), April 2, 2013 (April 2013 Committee Meeting Draft), May 30, 2013 (2013 Annual Meeting Draft), and October 25, 2013 (November 2013 Committee Meeting Draft), available at UNIFORM LAW COMM’N, <http://www.uniformlaws.org/Committee.aspx?title=Residential%20Landlord%20and%20Tenant%20Act> (last visited November 25, 2013). The subsequent drafts were unavailable for review when this article was written.

by the Committee.⁵ As the Committee progresses, it should create a bold document that can match the significance of the original Act in importance and longevity.

In addressing the steps the Drafting Committee should take in the revisionary process of the Act, this Article will consider in Part II the importance of uniformity in landlord and tenant law. Then, Part III addresses the history of the ULC and the background of the Act of 1972. In Part IV, this article explores the first draft of the Revised Act and compares and contrasts the draft provisions with the original Act. Finally, in Part V, this article concludes and discusses the potential the drafting committee has in shaping a robust Act that will carry with it the same magnitude of importance as the original Act did in 1972.

II. LANDLORD AND TENANT LAW: WHO CARES ABOUT IT AND WHY SHOULD IT BE UNIFORM?

Landlord and tenant law impacts almost everyone at some point or another. Most people have either been a landlord or tenant, have family members or friends who are or have been landlords or tenants, or as the case may be for law students and attorneys, have been asked questions related to landlord-tenant law.⁶ Attorneys are often called upon to provide advice or representation to landlords or tenants with little notice or preparation, and because the law is a complex mixture of property, contracts, torts, constitutional, administrative, consumer, poverty, disability, regulatory, and legislative law, its national uniformity is necessary for clarity in its application.⁷

The need for uniformity in landlord-tenant law is exacerbated by the continual growth in metropolitan areas and their expansion across state lines. As a result, it is increasingly common for landlords, tenants, and their attorneys to be affected by the laws of more than one state. Of the thirty largest metropolitan areas in the United States, thirteen border more than one state, and several border multiple states.⁸ Together, these metropolitan areas make up twenty-four percent of the United States' population.⁹

5. See discussion *infra* Part IV.B.

6. This information is based on informal surveys of law students that the author has conducted since 1996.

7. See generally ROBERT S. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT § 3:25 (1980 & Supp. 2013); Lawrence R. McDonough, *Wait a Minute! Residential Eviction Defense in 2009 Still Is Much More than "Did You Pay the Rent?,"* 35 WM. MITCHELL L. REV. 762 (2009).

8. The following ranks the largest metropolitan areas that comprise more than one state:

- 1) New York-Newark-Bridgeport, NY-NJ-CT-PA - 21,976,224 . . .
- 3) Chicago-Naperville-Michigan City, IL-IN-WI - 9,725,317
- 4) Washington-Baltimore-Northern Virginia, DC-MD-VA-WV - 8,211,213

III. THE UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT OF 1972

The Uniform Law Commission was created in 1892 with the purpose of creating uniformity in state laws and providing consistent rules and procedures throughout the country.¹⁰ In turning its focus to landlord and tenant law more than forty years ago, the ULC summarized the state of landlord and tenant relationships throughout the nation that gave rise to its four-year endeavor to create the Act:

Landlords and tenants in most states today carry on their disputes in a maze of disjointed and contradictory legislation, ordinances, administrative regulations and court decisions. All of these are based, or overlaid, on a system of "common law" devised to meet the needs of a feudal society in which noble landowners rented out their property to commoner farmers....

... [B]oth sides tend to view each other with suspicion. Misunderstandings fester into accusations and arguments [that] can, and often do, result in violence.

Most police departments list landlord-tenant problems as second only to "family matters" as a case of violent incidents. This is not surprising when we consider that a man's home usually ranks second only to his family as his most prized possession.¹¹

The ULC concluded that reform legislation should:

- Equalize the bargaining positions of landlords and tenants[;]

5) Boston-Worcester-Manchester, MA-RI-NH - 7,465,634 . . .

7) Philadelphia-Camden-Vineland, PA-NJ-DE-MD - 6,382,714 . . .

10) Atlanta-Sandy Springs-Gainesville, GA-AL - 5,478,667 . . .

15) Minneapolis-St. Paul-St. Cloud, MN-WI - 3,502,891 . . .

19) St. Louis-St. Charles-Farmington, MO-IL - 2,858,549 . . .

22) Sacramento--Arden-Arcade--Truckee, CA-NV - 2,211,790

23) Charlotte-Gastonia-Salisbury, NC-SC - 2,191,604

24) Portland-Vancouver-Beaverton, OR-WA - 2,137,565

25) Cincinnati-Middletown-Wilmington, OH-KY-IN - 2,147,617 . . .

27) Kansas City-Overland Park-Kansas City, MO-KS - 2,034,796

Matt Rosenberg, *Largest Metropolitan Areas*, ABOUT.COM (July 22, 2009), <http://geography.about.com/od/lists/a/csa2005.htm>.

9. These thirteen metropolitan areas have approximately 75 million people or twenty-four percent of the United States' population (316 million people). *U.S. & World Population Clock*, U. S. CENSUS BUREAU, <http://www.census.gov/popclock> (last visited Apr. 17, 2013).

10. *About the ULC*, UNIF. LAW COMM'N, <http://uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Apr. 17, 2013).

11. *Residential Landlord and Tenant Act Summary*, UNIF. LAW COMM'N, <http://uniformlaws.org/ActSummary.aspx?title=Residential%20Landlord%20and%20Tenant%20Act> (last visited Apr. 17, 2013).

- Force landlords to meet minimum standards for providing safe and habitable housing[;]
- Spell out the responsibilities of tenants for maintaining the quality of their housing units[; and]
- Insure [sic] tenants the right to occupy a dwelling as long as they fulfill their responsibilities.¹²

In addressing the Act of 1972, this section will consider the organization and structure of the Act in Part A, the commentary of the Act in Part B, and the importance and reception of the Act in Part C.

A. The Act

The URLTA is organized as follows: General Provisions and Definitions, Landlord Obligations, Tenant Obligations, and Remedies.¹³ Among the general provisions is a list of prohibited lease provisions, including waiver of rights under the Act, authorization of confessions of judgment, payment of the landlord's attorney's fees, and exculpation or limitation of landlord liability.¹⁴ Additionally, the general provisions provide that unconscionable provisions are unenforceable.¹⁵

Regulated obligations of landlords include security deposits, disclosure of information about the landlord, delivery of possession of the unit, and maintenance of the premises.¹⁶ For instance, a landlord must provide the tenant with an itemized notice of deposit withholding within fourteen days following termination of the tenancy.¹⁷ Similarly, at or before commencement of the tenancy, the landlord must disclose the name and address of the owner and manager.¹⁸ Finally, the landlord must deliver possession of the unit at the beginning of the tenancy.¹⁹

The landlord also has extensive and detailed property maintenance obligations.²⁰ The landlord must:

12. *Id.*

13. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT arts. I-IV (1972), available at <http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta%201974.pdf>.

14. *Id.* § 1.403, 7B U.L.A. 313.

15. *Id.* § 1.303, 7B U.L.A. 304.

16. *Id.* art. II, 7B U.L.A. 316.

17. *Id.* § 2.101, 7B U.L.A. 316.

18. *Id.* § 2.102, 7B U.L.A. 324.

19. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 2.103, 7B U.L.A. 325.

20. *Id.* § 2.104, 7B U.L.A. 326.

- (1) comply with the requirements of applicable building and housing codes materially affecting health and safety;
- (2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
- (3) keep all common areas of the premises in a clean and safe condition;
- (4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;
- (5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and
- (6) supply running water and reasonable amounts of hot water at all times and reasonable heat [between [October 1] and [May 1]] except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.²¹

The landlord and tenant may agree in writing and in good faith that the tenant shall perform specific maintenance, but adequate consideration is required only in single-family residences.²²

Tenant obligations include providing some maintenance for the property, following the landlord's rules, and providing the landlord access to the property.²³ With regard to the tenant's maintenance obligations, the tenant must:

- (1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (2) keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
- (3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (4) keep all plumbing fixtures in the dwelling unit or used by the tenant as clear as their condition permits;

21. *Id.* § 2.104(a) 7B U.L.A. 326.

22. *Id.* § 2.104(c)–(d), 7B U.L.A. 327.

23. *Id.* art. III, 7B U.L.A. 369.

(5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;

(6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so; and

(7) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.²⁴

While the tenant must comply with the landlord's rules and regulations, all rules must be sufficiently explicit and disclosed to the tenant.²⁵ To be enforceable, each rule must protect the landlord or tenant, relate reasonably to its purpose, and apply to all tenants at the premises in a fair manner.²⁶ No rule can exist for the purpose of evading the obligations of the landlord, and there cannot be a substantial modification of any bargain in the lease without tenant consent in writing.²⁷ The landlord may enter the property in emergencies, and the tenant must not unreasonably withhold consent from the landlord to enter to inspect the premises, make necessary or agreed repairs, supply services, or show the property.²⁸

The Act provides various remedies to tenants where the landlord has violated maintenance and delivery of possession obligations.²⁹ The remedies include termination of the tenancy, damages, injunctive relief, attorney fees, return of deposits and prepaid rents, specific performance, repair and deduction from rent for minor defects up to one hundred dollars, provision of essential services, and substitute housing.³⁰ The tenant also may defend an eviction action based on the landlord's violation of the Act, but the court may order the tenant to deposit the disputed rent into the court.³¹ Substantial damage or destruction of the property by fire allows the tenant to immediately vacate the premises, and, with written notice to the landlord, terminate the tenancy and end rent liability.³²

The URLTA also provides landlords with remedies for tenant violations, including eviction, entry to maintain the property, and damages.³³ The

24. *Id.* § 3.101, 7B U.L.A. 369.

25. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 3.102(a)(4), 7B U.L.A. 372

26. *Id.* § 3.102(a)(1)–(3), 7B U.L.A. 372

27. *Id.* § 3.102(b), 7B U.L.A. 372

28. *Id.* § 3.103(a)–(b), 7B U.L.A. 373

29. *Id.* art. IV, 7B U.L.A. 375.

30. *Id.* §§ 4.101–4.104, 7B U.L.A. 375–83.

31. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 4.105, 7B U.L.A. 387.

32. *Id.* § 4.106, 7B U.L.A. 389.

33. *Id.* §§ 4.201–4.202, 7B U.L.A. 394–400.

landlord must try to mitigate damages.³⁴ Acceptance of rent with knowledge of the tenant's default waives the landlord's right to terminate the lease, unless the parties agree otherwise after the breach.³⁵ The remedies of distress for rent and interruption of services are prohibited.³⁶

For both landlord and tenants, the Act provides the minimum notice for terminating periodic tenancies of varying intervals, and allows the landlord to commence an eviction action against a tenant who does not move following proper notice.³⁷ Both landlords and tenants may seek injunctive relief for violations of the property access provisions.³⁸

Finally, the URLTA prohibits retaliation.³⁹ Protected tenant activity includes complaints to the landlord and government agencies, as well as tenant organizing.⁴⁰ Adverse action by the landlord within one year of protected activity creates a presumption of retaliation that the tenant can raise as a defense in an eviction action, in addition to rent, treble damages and attorney fees.⁴¹

B. The Act's Commentary

The Official Comments of the Act explain the purpose of the different sections and serve to emphasize its place in the evolution of landlord and tenant law. The comment to § 1.102 on purposes and rules of construction notes the role of the Act as a continuation of the movement from old English law to a modern view of interdependent rights and obligations of landlords and tenants.⁴² In creating the official comments and serving the evolutionary purpose of the ULC and Act, the drafters of the Act employed various methods of analysis in the comments that illustrate the evolution of the law.

On one hand, the drafters noted that some provisions are based on a consensus of the states, or at least a critical mass of the law of the states, such as with retaliation remedies.⁴³ On the other hand, the comments mention only a small number of states and do not discuss any broad consensus, but instead focus on policy considerations. Examples include prohibited lease provisions,⁴⁴ security deposits,⁴⁵ landlord disclosure,⁴⁶ property

34. *Id.* § 4.203(c), 7B U.L.A. 400.

35. *Id.* § 4.204, 7B U.L.A. 402.

36. *Id.* §§ 4.205, 4.207, 7B U.L.A. 404, 406.

37. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 4.301, 7B U.L.A. 407.

38. *Id.* § 4.302, 7B U.L.A. 410.

39. *Id.* § 5.101, 7B U.L.A. 411.

40. *Id.* § 5.101(a)(1)–(3), 7B U.L.A. 411.

41. *Id.* §§ 5.101(b), 4.107, 7B U.L.A. 411, 391.

42. *Id.* § 1.102 cmt., 7B U.L.A. 292.

43. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 5.101 cmt., 7B U.L.A. 411.

44. *Id.* § 1.403 cmt., 7B U.L.A. 313.

45. *Id.* § 2.101 cmt., 7B U.L.A. 316.

maintenance,⁴⁷ eviction defense remedies,⁴⁸ and constructive eviction.⁴⁹ In other areas, the Act sought to resolve a split among the states, as with the status of the holder of the landlord's interest in security deposit at the end of the tenancy.⁵⁰

The drafters also relied on sources other than state law, with examples being good faith, unconscionability, and notice.⁵¹ Finally, on some issues, the Act departs from previous conceptions of landlord and tenant law, and instead employs policy considerations, such as the sections addressing the terms and conditions of a lease agreement,⁵² the effect of unsigned and undelivered agreements,⁵³ limitations on enforcement of rules and regulations,⁵⁴ access to the property,⁵⁵ various tenant remedies,⁵⁶ and various landlord remedies and limitation on remedies.⁵⁷

In prohibiting certain lease provisions, the drafters noted that those provisions may "prejudice and injure the rights and interests of the uninformed tenant who may, for example, surrender or waive rights in settlement of an enforceable claim against the landlord for damages arising from the landlord's negligence."⁵⁸ For instance, while security deposits are allowed, the Act "limits the amount and prescribes penalties for its misuse."⁵⁹ The purpose of the landlord's disclosure requirement "is to enable the tenant to proceed with the appropriate legal proceeding, to know to whom complaints must be addressed and, failing satisfaction, against whom the appropriate legal proceedings may be instituted."⁶⁰ The drafters went into more detail in their discussion of the purpose of the landlord's maintenance obligation.

Vital interests of the parties and public under modern urban conditions require the proper maintenance and operation of housing. It is thus necessary that minimum duties of landlords and tenants be set forth. Generally duties of repair and maintenance of the dwelling unit and the premises are imposed upon the landlord by this section. Major repairs, even access, to essential systems outside the dwelling unit are beyond the ca-

46. *Id.* § § 2.102 cmt., 7B U.L.A. 324.

47. *Id.* § 2.104 cmt., 7B U.L.A. 327.

48. *Id.* § 4.105, cmt., 7B U.L.A. 387.

49. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT *Id.* § 4.107, cmt., 7B U.L.A. 391.

50. *Id.* § 2.101, cmt. to subsection (e), 7B U.L.A. 317.

51. *Id.* §§ 1.302–1.304, cmts., 7B U.L.A. 303–07.

52. *Id.* § 1.401, cmt., 7B U.L.A. 307.

53. *Id.* §§ 1.401–1.402, cmts., 7B U.L.A. 307–13.

54. *Id.* § 3.102, cmt., 7B U.L.A. 372.

55. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 3.103, cmt., 7B U.L.A. 373.

56. *Id.* §§ 4.101–4.104, 4.107, cmts., 7B U.L.A. 375–84, 391.

57. *Id.* §§ 4.201–4.207, 4.301–4.302, cmts., 7B U.L.A. 395–406, 407–10.

58. *Id.* § 1.403, cmt., 7B U.L.A. 313.

59. *Id.* § 2.101, cmt., 7B U.L.A. 316.

60. *Id.* § 2.102, cmt., 7B U.L.A. 325.

capacity of the tenant. Conversely, duties of cleanliness and proper use within the dwelling unit are appropriately fixed upon the tenant.⁶¹

The comments outlined above illustrate the drafters' use of majority and minority trends in state law to inform the official rules, as well as the drafters' consideration of states that insufficiently balanced the powers between landlord and tenants, and thus required a departure from state law and instead a use of policy considerations in drafting the Act. This diverse approach to forming the URLTA should continue to inform the drafters in the revisionary process.

C. The Act's Importance and Its Reception

To better understand the importance of the Act, one must have some background on landlord and tenant law before the 1960s when the ULC began working on it. Under English common law, the landlord's obligation to a tenant was little more than providing possession of the property. There was no obligation to disclose who owns and manages the property, or even to maintain the property. There was no regulation of security deposits, nor were there any prohibitions on lockouts, utility service terminations, and retaliation.⁶² Indeed, the Act's importance at the time of its adoption by the ULC was incredible. For instance, modern landlord-tenant practitioners may take for granted the landlord's obligation to maintain the property or the legal prohibitions on lockouts, utility service terminations, and retaliation as always having been part of the law of landlord-tenant law. While rational to modern thinkers, prior to the URLTA, such tenant protections were non-existent.

The importance of the Act's adoption did not go unnoticed by legal scholars. Robert Schoshinski, author of the main treatise on landlord and tenant law, considered the Act as "[p]robably the most comprehensive of the statutory developments."⁶³ Others likened it to a wholesale departure from the past,⁶⁴ akin to a "Tenant's Bill of Rights."⁶⁵

Bruce Bagni's contemporaneous review of the Act's main provisions underscores its significance.⁶⁶ He begins by noting that "[t]he drafters of the URLTA recognized the obsolescence of traditional landlord-tenant law; consequently, they signalled [sic] for wholesale departures. Whereas, the

61. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 2.104, cmt., 7B U.L.A. 326.

62. See SCHOSHINSKI, *supra* note 9, §§ 1:1, 3:1, 3:10, 12:1; Bruce N. Bagni, Note, *The Uniform Residential Landlord and Tenant Act: Reconciling Landlord-Tenant Law with Modern Realities*, 6 IND. L. REV. 741, 741-42, 744-46, 763 (1973).

63. SCHOSHINSKI, *supra* note 9, § 1.1 at 4.

64. Bagni, *supra* note 63, at 752.

65. Curtis J. Berger, *Hard Leases Make Bad Law*, 74 COLUM. L. REV. 791, 813 (1974).

66. Bagni, *supra* note 65.

common law minimized landlord obligations, the URLTA maximizes them; substantial affirmative duties have been imposed in the spirit of the judicial decisions and legislative acts.⁶⁷ He then goes on to review specific provisions of the Act. The landlord's disclosure obligation is:

A total departure from traditional landlord-tenant practice, is designed to "smoke out" the so-called "absentee landlord." The person collecting the rent in the absence of disclosure is deemed to have the authority to accept notices and service of process and to provide for the necessary maintenance and repairs. As a result, there can be no buck passing with respect to obligations, and if such obligations are not met, the tenant is able to proceed legally without having to investigate and determine against whom the suit should be brought.⁶⁸

Concerning maintenance of the property, Bagni writes that "The URLTA primarily attempts to provide meaningful tenant remedies by incorporating health and safety codes and the duty to repair and maintain into every residential lease in an attempt to establish a contractual basis for relief. The landlord is obligated to perform specific functions pursuant to any residential lease, and his failure to perform results in contractual liability."⁶⁹ The remedy of an eviction defense based on the landlord's violation of maintenance obligations is

[A] far-reaching remedy; in essence, it once again provides for a kind of rent withholding. The tenant who in good faith believes the landlord has failed to comply with the provisions of the URLTA or the rental agreement may refuse to pay rent. When the landlord brings a suit for possession based on nonpayment of rent, the tenant may counterclaim for damages. The rent which the tenant has theretofore withheld will be deposited with the court. Win or lose, the tenant has *legally* withheld the payment of rent because of an alleged breach of the landlord's contractual obligations.⁷⁰

Finally, Bagni notes the importance of invalidating unconscionable legal provisions, regulation of security deposits, and prohibition of retaliation as major departures of past practices.⁷¹

Forty years later, the URLTA has been adopted in Alabama, Alaska, Arizona, Connecticut, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Rhode

67. *Id.* at 752.

68. *Id.* at 753-54.

69. *Id.* at 760.

70. *Id.* at 762-63.

71. *Id.* at 763-67.

Island, South Carolina, Tennessee, Virginia, and Washington.⁷² The reach of the Act goes much farther than these states, as variations on its provisions can be found in many more states. Michael Brower wrote in 2011 of the connection between the Act and the development of property maintenance requirements in the states:

Despite concerns that the URLTA was “decidedly pro-tenant legislation,” it became the foundation for the flood of comprehensive legislative reforms that followed. By 1984, more than forty states had adopted the implied warranty by statute. Of these, roughly one-half were modeled on the URLTA. Where the URLTA was not adopted, states adapted existing code requirements and added new statutory remedies for tenants, effectively allowing tenants to refuse to make rent payments or defend nonpayment of rent on the basis of code violations. By the mid-1980s, therefore, a large majority of states had increased tenants' rights, imputing upon all residential landlords an obligation to maintain their premises in a habitable state....

Following the flood of legislative adoptions of the implied warranty before 1984, states that had not revised their legislation remained slow to do so. Today, however, forty-nine states have adopted some form of the implied warranty and corresponding tenants' rights. The only state not to adopt the implied warranty is Arkansas, where state law requires that tenants take affirmative steps to maintain residential premises at standards set by housing codes.

Although landlords' obligations and tenants' rights vary by state, they remain largely the same as those enumerated under the URLTA. The principal requirement of the modern implied warranty is that the premises remain in a “habitable state.” As this is typically measured by reference to code violations, the general effect of the implied warranty in all states is to provide tenants with statutory rights in the event of a landlord's noncompliance with local housing codes. Beyond the requirement that the premises remain habitable, a landlord's obligations are limited in some states and broad in others. Typically, tenants can defend their nonpayment of rent on the basis of a landlord's breach and can also deduct the cost of minor repairs from rent. The scope and cost of permissible repairs, however, varies greatly between states.⁷³

Tom Geurts found the same connection regarding security deposit regulation:

72. UNIF. RESIDENTIAL LANDLORD & TENANT ACT, Table of Jurisdictions Wherein Act Has Been Adopted, 7B U.L.A. Supp. 44 (Supp. 2013).

73. Michael A. Brower, *The “Backlash” of the Implied Warranty of Habitability: Theory vs. Analysis*, 60 DEPAUL L. REV. 849, 860–62 (2011).

[The] presumption [that the residential landlord has bargaining strength superior to that of the tenant] is characteristic of much of the contemporary literature and case law of landlord-tenant relations.” Consequently, during the so-called revolution in landlord-tenant law of the 1960s and 1970s, courts and legislatures reacted to these concerns by enacting statutes that governed the amount, disposition, and return of security deposits. The URLTA is the prime example, and many states have modeled their statutes upon it. Indeed, many states that have not adopted the URLTA, did adopt separate legislation governing security deposits. These statutes closely resemble the intent and wording of the URLTA. A large number of articles have been written on the implementation of the URLTA in general, on the adoption by different states, and its effect on security deposits. Security deposit legislation also led, in general, to an increase in litigious activities. The provisions regarding the security deposit in the URLTA and other security deposit legislation has brought important changes to the usage of security deposits.⁷⁴

Some have argued that the Act and other landlord and tenant law legislation actually does little to change larger macroeconomic trends in the supply of affordable and habitable housing, and may actually work to the detriment of tenants.⁷⁵ While there is no consensus of these “macro” questions,⁷⁶ there is no doubt that reform helps tenants on the “micro” level. Under the Act, a tenant has many rights and remedies unavailable at common law.⁷⁷

IV. THE REVISED RESIDENTIAL LANDLORD AND TENANT ACT

In 2010, the ULC created the Study Committee on a Revision of the Uniform Residential Landlord and Tenant Act. In 2011, the Study Committee “*unanimously*” agreed to recommend to the conference that a drafting committee be formed to comprehensively revise the Uniform Residential Landlord and Tenant Act.”⁷⁸ The ULC created the Drafting Committee (the

74. Tom G. Geurts, *The Historical Development of the Lease in Residential Real Estate*, 32 REAL ESTATE L.J. 356 (2004) (quoting James F. Conley, Note, *An Overview of the Tennessee Residential Landlord and Tenant Act*, 7 MEM. ST. U. L. REV. 109, 109 n. 5 (1976)).

75. See generally Brower, *supra* note 74, discussing whether habitability reform helps tenants.

76. *Id.*

77. While similar arguments have been made that it is unclear whether anti-discrimination laws have a positive macroeconomic effect, see John J. Donahue, *Antidiscrimination Law*, in 2 HANDBOOK OF LAW AND ECONOMICS 1387 (A.M. Polinsky & Steven Shavell, eds., 2007), available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1033&context=lepp_papers (last visited April 17, 2013), the micro impact of providing anti-discrimination remedies to an individual cannot be denied.

78. Memorandum from Sheldon F. Kurtz, Chair, Study Committee, to Scope and Program Committee, UNIFORM LAWS COMM’N 3 (May 18, 2011), available at

“Committee”), which notes that “there have been many new statutory and common law developments that affect residential landlord and tenant law, and the committee will seek to codify best current practices in a revised act.”⁷⁹ This section addresses the various changes of the First Draft in Part A, and in Part B considers the substantive strengths and weaknesses of the current revisions suggested by the Committee.

A. The First Draft

On September 17, 2012, the Committee issued a draft Revised Residential Landlord and Tenant Act (the “First Draft”).⁸⁰ The First Draft renumbers the original Act and reorganizes it into articles on general provisions, landlord obligations, tenant obligations, tenant remedies, landlord remedies, miscellaneous provisions, retaliation (not yet drafted), security deposits, and evictions (not yet drafted).⁸¹ The First Draft expands definitions to include abandonment, domestic violence, electronic notices, essential services, normal wear and tear, periodic tenancies, security deposits, and subleases.⁸² The original provisions on good faith and unconscionability remain unchanged,⁸³ while the notice provision was updated to include electronic communication.⁸⁴ Terms and conditions and prohibited provisions also remain the same.⁸⁵

http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta_studycomtereport_051811.pdf (last visited April 17, 2013) (emphasis added).

79. *Residential Landlord and Tenant Act Committee*, UNIF. LAW COMM’N, <http://www.uniformlaws.org/Committee.aspx?title=Residential%20Landlord%20and%20Tenant%20Act> (last visited Apr. 17, 2013).

80. The First Draft and the Redline First Draft are available at UNIFORM LAW COMM’N, <http://www.uniformlaws.org/Committee.aspx?title=Residential%20Landlord%20and%20Tenant%20Act> (titled October 2012 Meeting Draft and October 2012 Redline Draft) (last visited November 25, 2013). The ULC Drafting Committee released subsequent drafts on January 28, 2013 (February 2013 Meeting Draft), April 2, 2013 (April 2013 Committee Meeting Draft), May 30, 2013 (2013 Annual Meeting Draft), and October 25, 2013 (November 2013 Committee Meeting Draft), available at UNIFORM LAW COMM’N, <http://www.uniformlaws.org/Committee.aspx?title=Residential%20Landlord%20and%20Tenant%20Act> (last visited November 25, 2013). The subsequent drafts were unavailable for review and analysis before completion of this article. They include new articles on landlord access to the property, retaliation, disposition of personal property, and assignments and subleases.

81. *October 2012 Meeting Draft*, UNIFORM LAW COMM’N, http://www.uniformlaws.org/shared/docs/Residential%20Landlord%20and%20Tenant/2012sep17_URLTA_MtgDraft.pdf (last visited April 17, 2013).

82. *Id.* § 102.

83. *Id.* §§ 109–10.

84. *Id.* § 111.

85. *Id.* §§ 201, 203.

The First Draft expands the landlord's disclosure obligation to include the landlord's rules and the condition of the property.⁸⁶ The landlord's maintenance obligation has also expanded to define uninhabitable as substantial problems with local codes, weatherization, plumbing, running water, adequate heat, electricity, infestation, hazardous substances, sanitation, repairs, ventilation, security, and safety equipment. The parties may agree in writing—and in good faith—to have the tenant perform specified repairs.⁸⁷

The obligations of a tenant under the First Draft were not significantly altered. Provisions on the landlord's rules and regulation, the landlord's access, and the tenant's use of the property are unchanged.⁸⁸ Added to the tenant's maintenance obligation are requirements to notify the landlord of certain problems with the condition of the property and to leave the property in good condition at the end of the tenancy.⁸⁹

The First Draft revises the tenant's remedies for landlord violations but retains most of the content of the original Act. The most substantial change in the First Draft concerns the measurement of damages, choosing the standard of the "value of the use and occupation of the dwelling unit" and expressly stating that the value may be determined without expert testimony.⁹⁰ The remedy of repair and deduct is discussed in more detail, and now is available for a cost of the greater of one half the rent or \$500.⁹¹ The remedy for loss of essential services now uses the above damages standard.⁹² The First Draft revised the eviction defense remedy, again using the above damages standard. The court still may order the tenant to pay rent into court.⁹³ The constructive eviction provision also used the damages standard.⁹⁴

One of the most unique and important changes in the First Draft is a section concerning tenant remedies with respect to domestic violence. The victim or an immediate family member can terminate the lease within 90 days of a domestic violence incident with 14 days' notice to the landlord and verification of the violence.⁹⁵ The First Draft includes an example of proper verification.⁹⁶ In such an instance, the Committee provided the landlord with various remedies against the perpetrator.⁹⁷ The victim or an immediate fami-

86. *Id.* § 301.

87. *October 2012 Meeting Draft, supra* note 82, § 303.

88. *Id.* §§ 402–04.

89. *Id.* § 401.

90. *Id.* § 501.

91. *Id.* § 503.

92. *Id.* § 504.

93. *October 2012 Meeting Draft, supra* note 82, § 505.

94. *Id.* § 507.

95. *Id.* § 508.

96. *Id.* § 508, cmt.

97. *Id.* § 508(e).

ly member may also request that the landlord change the locks.⁹⁸ The First Draft also discusses the effect of a domestic violence restraining order on the victim and landlord.⁹⁹

The First Draft makes minor changes to the landlord's remedies of the nonpayment of rent notice¹⁰⁰ and no changes to the tenant's maintenance obligation,¹⁰¹ waiver,¹⁰² distress,¹⁰³ and post-termination remedies.¹⁰⁴ Regarding tenant absence and abandonment, the First Draft provides alternative definitions of fair rental value and a detailed discussion of reasonable efforts to rent the property.¹⁰⁵

Article VII of the First Draft covers periodic tenancies, the death of the tenant, holdover tenancies, and abuse of access to the property.¹⁰⁶ Section 701 keeps the content of the original Act's provisions on periodic tenancies, but departs from the Act concerning termination of the tenancies.¹⁰⁷ The landlord now can terminate a fixed-term tenancy for sale of the property.¹⁰⁸ The tenant may terminate the tenancy for new employment.¹⁰⁹ Either the landlord or personal representative can terminate the tenancy of a deceased tenant.¹¹⁰ Holdover tenancies are modestly changed to cover agreements to continue renting,¹¹¹ and remedies for abuse of access are unchanged.¹¹²

The First Draft devotes a whole article to security deposits,¹¹³ an expansion from one section in the Act.¹¹⁴ Under this provision, a deposit can be one and a half times the rent—previously the deposit was limited to an amount not to exceed the monthly rent.¹¹⁵ It also treats both deposits and prepaid rent as property of the tenant.¹¹⁶ The tenant may not use the

98. *Id.* § 509.

99. *October 2012 Meeting Draft, supra* note 82, § 510.

100. *Id.* § 601.

101. *Id.* § 602.

102. *Id.* § 604.

103. *Id.* § 605.

104. *Id.* § 606.

105. *October 2012 Meeting Draft, supra* note 82, § 603.

106. *Id.* art. VII.

107. *Id.* § 701.

108. *Id.*

109. *Id.*

110. *Id.*

111. *October 2012 Meeting Draft, supra* note 82, § 702.

112. *Id.* § 703.

113. *Id.* art. IX.

114. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 2.101 (amended 1974), 7B U.L.A. 316.

115. *Compare October 2012 Meeting Draft, supra* note 82, § 901, with UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 2.101 (amended 1974), 7B U.L.A. 316.

116. *October 2012 Meeting Draft, supra* note 82, § 901.

deposit to cover rent.¹¹⁷ The landlord must segregate deposits and prepaid rent from other funds.¹¹⁸ Section 904 provides a detailed process for handling the deposit at the end of the tenancy, giving the landlord 30 days rather than 14 days to account for the deposit, giving the tenant only 10 days to object, and providing remedies for violations.¹¹⁹ Section 905 is a new section that covers handling of deposits and prepaid rent after a transfer of the landlord's interest in the premises.¹²⁰

B. Still Bold and Relevant?

The Committee has the potential to create a bold and relevant revision to the URLTA to match its significance at inception over forty years ago. The First Draft is a good start on disclosure, property maintenance, domestic violence, mitigation, and deposits. For instance, a landlord must disclose more than identity and addresses, and must now include notice of both the landlord's rules and the condition of the property.¹²¹ The landlord's maintenance obligations are extensive and detailed.¹²² Rent abatement damages have been clarified.¹²³ The value of repair and deduct is higher.¹²⁴ The sections on domestic violence are new.¹²⁵ The lease can be terminated for new employment and death of the tenant.¹²⁶ Deposits now are extensively regulated.¹²⁷ These provisions are a step in the right direction, but more is needed. The Act led the states rather than simply following them. The revision needs to do the same to remain relevant. There are many areas where the revisions have not gone far enough, and there are other areas that the Committee has not addressed. Although the First Draft expanded the landlord's maintenance obligations, it left two troubling provisions relatively unchanged while ignoring an important tenant remedy for habitability viola-

117. *Id.* § 902.

118. *Id.* § 903.

119. Compare *October 2012 Meeting Draft*, *supra* note 82, § 904, with UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 2.101 (amended 1974), 7B U.L.A. 316.

120. *October 2012 Meeting Draft*, *supra* note 82, § 905.

121. Compare *October 2012 Meeting Draft*, *supra* note 82, § 301, with UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 2.102, 7B U.L.A. 324 (2006).

122. Compare *October 2012 Meeting Draft*, *supra* note 82, § 303, with UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 2.104, 7B U.L.A. 326.

123. Compare *October 2012 Meeting Draft*, *supra* note 82, § 501, with UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 4.101 (amended 1974), 7B U.L.A. 375.

124. Compare *October 2012 Meeting Draft*, *supra* note 82, § 503, with UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 4.103, 7B U.L.A. 382.

125. Compare *October 2012 Meeting Draft*, *supra* note 82, § 510, with UNIF. RESIDENTIAL LANDLORD AND TENANT ACT art. IV pt. I, 7B U.L.A. 375.

126. *October 2012 Meeting Draft*, *supra* note 82, § 701.

127. *Id.* art. IX.

tions. Both the Act and the First Draft allow the court to order tenants to pay rent into court to defend an eviction for nonpayment of rent.¹²⁸ Drew Schaffer, a leading eviction law practitioner who has litigated apartment habitability and eviction cases for many years, asserts that there are several problems with this approach.

As an initial matter, there can be jurisdictional, procedural, and substantive defects in an eviction case that are determinative of the case in the tenant's favor independent of a rent claim pleaded by the landlord. Allowing the court to issue a rent-posting order in advance of a hearing on the merits opens the door for the court to disregard or to delay decisions on other important issues, *e.g.*, whether the landlord effected proper service in the case.

Secondly, many low-income tenants are denied their day in court to litigate habitability issues when they are unable to hold onto all of the withheld rent while the eviction case is pending. This is especially problematic since the landlord has a duty to make repairs, and habitability problems usually arise out of the landlord's violation of the law. Ordering the posting of rent as a precondition to trial to determine whether rent is owed in an eviction case involving habitability creates a significant hurdle for access to the court by low-income tenants, who are often living in substandard housing due to the low monthly rent and other factors.

Finally, the need for security for the plaintiff in an eviction case is significantly lower than can be said for plaintiffs in other types of litigation due to the summary nature of the proceedings involved in an eviction case. In other areas of law, litigants are not required to place in the court's custody the property or money that is the subject matter of the dispute for a court's determination in the case. A large corporation sued by a supplier for nonpayment under a contract for delivery of goods generally does not have to post the claimed payment obligation to dispute the claim in litigation that may unfold over months or years. In eviction cases, there is little harm to a landlord – even one who ultimately prevails – in being deprived of rent for a week or so while the court decides whether the landlord is entitled to possession and whether rent is owed.¹²⁹

Paying past rent into court also creates a conflict for the court between awarding rent abatement to the tenant and holding funds for repairs. Several states do not require tenants to pay rent into court to litigate habitability vio-

128. UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 4.105, 7B U.L.A. 387; *October 2012 Meeting Draft*, *supra* note 82, § 505.

129. E-mail from Drew Schaffer, Adjunct Professor of L., Univ. of Minn. L. Sch., to Lawrence R. McDonough, Pro-Bono Counsel, Dorsey & Whitney (Apr. 17, 2013, 10:53 CST) (on file with author).

lations.¹³⁰ Tenants should not have to pay rent into court to prove they do not owe rent due to habitability or other defenses.

The landlord can evade some of the property maintenance obligations because of the use of the double negative and the modifier “substantially” in the First Draft: “premises are uninhabitable if any part of the premises substantially: (1) fails to comply with applicable building, housing, and health codes to the extent the failures substantially affect the health and safety of the tenant or an immediate family member. . . .”¹³¹ A landlord would violate the above provision only if the property substantially violates the local code. Both landlords and tenants are disserved by the lack of clarity in the landlord’s obligation with the use of the modifier “substantially” in the First Draft. Some landlords might be encouraged to violate codes and other obligations set forth in the First Draft until a court determines what rises to a substantial violation.

The obligation should be positive and not modified by the term “substantial” in the following general form: “A landlord’s mandatory duty under subsection (a) includes the following obligations of maintenance and repair at the premises: (1) to comply with applicable building, housing, and health codes to the extent the failures affect the health and safety of the tenant or an immediate family member”

The First Draft allows the parties to negate many of the habitability provisions through a written agreement that must be in good faith, but there is no mention of adequate consideration for the agreement.¹³² A tenant should be adequately compensated for performing the landlord’s maintenance obligations.¹³³ This is another example where the Committee should

130. URLTA states: Kentucky, New Mexico, Oklahoma, and Tennessee. See Alice Noble-Allgire, *Memorandum to Members of the URLTA Drafting Committee: 50 State Survey of the Warranty of Habitability*, UNIFORM LAWS COMM’N 17 (Feb. 12, 2012), http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta_memo_warrantyofhabitability_021212.pdf.

Other states: California: CAL. CIV. PROC. § 1174.2 (West 2007); Email from Kent Qian to Lawrence R. McDonough, Pro-Bono Counsel, Dorsey & Whitney (January 18, 2013) (on file with the author). Massachusetts (future (not past) rent into court after bench trial and only preceding trial if by jury). MASS. GEN. LAWS ANN. ch. 239, § 8A (West 2004 & Supp. 2013); e-mail from Mac McCreight to Lawrence R. McDonough, Pro-Bono Counsel, Dorsey & Whitney (January 18, 2013) (on file with the author). Michigan (for jury trial). MICH. COMP. LAWS ANN. § 600.5741 (West 2000); MICH. CT. R. 4.201(H)(2); e-mail from Jim Schaafsma to Lawrence R. McDonough, Pro-Bono Counsel, Dorsey & Whitney (January 28, 2013) (on file with the author). North Carolina: N.C. GEN. STAT. ANN. § 42-42 (West 2013); Email from Evan Lewis to Lawrence R. McDonough, Pro-Bono Counsel, Dorsey & Whitney (January 18, 2013) (on file with the author).

131. *October 2012 Meeting Draft*, *supra* note 82, § 303(a)(1).

132. *Id.* § 303(b).

133. See MINN. STAT. ANN. § 504B.161 subdiv. 2 (West 2002 & Supp. 2013) (“The landlord or licensor may agree with the tenant or licensee that the tenant or licensee is to perform

have led the states in balancing the rights and obligations of landlords and tenants.

A final issue concerning habitability is tort liability for a landlord's failure to maintain the property. The original Act and First Draft do not discuss tort liability for habitability violations. Many states provide for tort liability.¹³⁴ States without tort liability provide no redress for serious injury and death resulting from violations.¹³⁵ Nationwide tort liability could lead the insurance industry to create different rates for compliant and noncompliant landlords. Differing insurance rates could create a financial incentive to maintain rental property. The Restatement (Second) of Property provides a workable standard:

A landlord is subject to liability for physical harm caused to the tenant and others upon the leased property with the consent of the tenant or his subtenant by a dangerous condition existing before or arising after the tenant has taken possession, if he has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of: (1) an implied warranty of habitability; or (2) a duty created by statute or administrative regulation.¹³⁶

While the expansion of security deposit regulation has improvements, it has moved backward in two respects. The First Draft increases the deposit to one-and-a-half times the rent.¹³⁷ While the increase might appear insignificant to middle and upper income tenants, it is substantial for tenants with lower incomes. Some recent studies have found an increase in the percentage of tenants paying one-half of their income for rent.¹³⁸ This provision is

specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve the landlord or licensor of the duty to maintain common areas of the premises.”).

134. “A substantial number of jurisdictions . . . have permitted the recovery of tort damages.” See Noble-Allgire, *supra* note 131, at 33–34 n. 153, 154 (noting that “Alaska, Delaware, Florida, Georgia, Hawaii, Indiana, Louisiana, Mississippi, Montana, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Washington, West Virginia, Wisconsin, and Wyoming allow some form of tort damages for the breach of the warranty of habitability,” and that “Arizona, California, Idaho, Maine, Massachusetts, Missouri, Nevada, New Hampshire, New York, Tennessee, Utah, and Vermont have permitted recovery of damages under negligence or other tort theories.”).

135. See generally Lawrence R. McDonough, *Still Crazy after All of These Years: Landlords and Tenants and the Law of Torts*, 33 WM. MITCHELL L. REV. 427 (2006).

136. RESTATEMENT (SECOND) OF PROP.: LANDLORD AND TENANT § 17.6 (1977).

137. Compare *October 2012 Meeting Draft*, *supra* note 82, § 901, with UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 2.101 (amended 1974), 7B U.L.A. 316.

138. See Phyllis Furman, *Study: City's escalating rents eat away as much as half of low-income New Yorkers' pay checks*, NEW YORK DAILY NEWS (June 20, 2012, 11:30 PM), <http://www.nydailynews.com/life-style/real-estate/study-city-escalating-rents-eat-low-income-new-yorkers-pay-checks-article-1.1099595> (last visited November 25, 2013); *LA*

exacerbated by the Act's requirement that a tenant pay an entire month's income for the deposit and in addition to the first month's rent. Now the revision would require that tenant to pay 125% of a month's income.

This problem is magnified when considering what a tenant preparing to move would have to pay to secure a new apartment while paying rent at the current apartment and awaiting return of the deposit for the current apartment. A tenant who wants to enter into a lease for a new apartment during the last month of the current lease would have to (1) pay the current rent, (2) pay the first month's rent for the new apartment, (3) pay the deposit for the new apartment, and (4) wait for return of the current deposit until after moving. If each rent individually is $\frac{1}{2}$ of the tenant's income, and the deposits equal the rents, the combined rents and deposits come to 200% of the tenant's income. If the deposits are $1\frac{1}{2}$ times the rents, the total is 300% of the tenant's income. A tenant who cannot afford to move becomes a captive in their current apartment and has much to risk by attempting to enforce their rights.

Another problem with the First Draft concerns the period of time in which a tenant may object to the landlord's withholding of the deposit. The First Draft requires the tenant to object to the withholding in ten days from the landlord's notice.¹³⁹ The overwhelming majority of states do not have such a limit.¹⁴⁰ The ULC should retain the original deposit ceiling from the Act and not limit the time for the tenant to object.

A major improvement on the original Act is the First Draft's provisions on domestic violence, which the original Act did not address. While it is a good first step, more could be done to protect domestic violence victims. Under the first draft, termination of the lease must be within ninety days of the domestic violence act with fourteen days' notice to the landlord, in addition to the verification of the violent act.¹⁴¹ All of these qualifications limit the usefulness of this provision. Some states allow for termination of the lease with less notice and without third-party verification.¹⁴² If third-party

Rent Control Study Reveals That Rent Burden to Tenants Has Increased Significantly, While Landlords Profits Continue to Rise, COALITION FOR ECONOMIC SURVIVAL, <http://www.cesinaction.org/AnnouncementsActions/StudyRevealsRentBurdenIncreasedSignificantly/tabid/278/Default.aspx> (last visited November 25, 2013).

139. *October 2012 Meeting Draft*, *supra* note 82, § 904.

140. *See Existing State Security Deposit Statutes*, UNIFORM LAWS COMM'N (Mar. 12, 2012) (on file with the author).

141. *October 2012 Meeting Draft*, *supra* note 82, § 508.

142. *See* 765 ILL. COMP. STAT. 750/15 (West 2009); e-mail from Lisa Coleman to Lawrence R. McDonough, Pro-Bono Counsel, Dorsey & Whitney (January 18, 2013) (on file with the author). *See also* Sybil Hebb, *Memorandum to Members of the URLTA Drafting Committee: Comments Regarding the Domestic Violence, Sexual Assault, and Stalking Provisions of the Draft Revised Uniform Residential Landlord and Tenant Act*, (October 10, 2012),

verification is retained, listed third parties should include clergy and attorneys.¹⁴³ Domestic violence should include threats of violence, and sexual assault should be a distinct category.¹⁴⁴ The victim also should have a defense to an eviction based on the act of domestic violence.¹⁴⁵

Finally, there are tenant protections available around the country that were not included in the original Act or the First Draft. Examples include application fee regulation;¹⁴⁶ reciprocal attorney fees;¹⁴⁷ caretakers having the rights of tenants;¹⁴⁸ drug-related and illegal activity eviction limited to activity on property with tenant's knowledge;¹⁴⁹ early lease termination for persons who need to move due to disability,¹⁵⁰ admission into senior facilities or public or subsidized housing,¹⁵¹ or employment changes;¹⁵² eviction due process protections for tenants;¹⁵³ expungement or sealing eviction court

http://www.uniformlaws.org/shared/docs/Residential%20Landlord%20and%20Tenant/2012oct10_URLTA_OLC_Hebb%20comments.pdf. (last visited Nov. 25, 2013). See generally *Existing State Statutes On Tenant Victims Of Domestic Violence*, UNIFORM LAWS COMM'N (Mar. 12, 2012) (on file with the author).

143. OR. REV. STAT. ANN. § 90.453(1)(b) (West 2010 & Supp. 2013) (limiting those who qualify as an “attesting third party” to an attorney, law enforcement official, health care professional, or victim services advocate at a victim services provider); WASH. REV. CODE ANN. § 59.18.570 (West Supp. 2013) (including clergy members as attesting third parties). See Hebb, *supra* note 143.

144. See Hebb, *supra* note 143.

145. *E.g.*, D.C. CODE § 42-3505.01 (2012) (providing an absolute defense to an eviction based on an intra-family offense where the tenant has a court-issued, temporary or civil protection order). See also 42 U.S.C. § 1437d (2006) (public housing statute); 42 U.S.C. § 1437f(o)(20)(D)(v) (2013); 42 U.S.C. § 1437f (ee) (2006); Violence Against Women Reauthorization Act of 2013 Pub. L. No. 113-4, Tit. VI., ch. 2, 127 Stat. 54, 102-07, §601 (2013) (preventing covered housing programs from denying applicants or evicting tenants because they were victims of domestic violence); 24 C.F.R. §§ 5.2001-5.2009, 966.4 (2013) (public housing regulations); 24 C.F.R. §§ 5.2001-5.2009, 982.310, 982.551 (2013) (Section 8 Existing Housing Voucher statutes and regulations). See generally Lawrence R. McDonough & Mac McCreight, *Wait a Minute: Slowing Down Criminal-Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55, 66-67 (2007).

146. *E.g.*, MASS. GEN. LAWS ANN. ch. 111, § 127D (West 2003); MINN. STAT. ANN. § 504B.173 (West 2002 & Supp. 2013).

147. *E.g.*, MINN. STAT. ANN. § 504B.172 (West Supp. 2013) (requiring an attorney fee provision to create a reciprocal attorney fee claim for tenants); see also, *e.g.*, N.Y. REAL PROP. LAW § 234 (McKinney 2006); TEX. PROP. CODE ANN. § 24.006 (West 2000).

148. See MINN. STAT. ANN. § 504B.001, subdiv. 12 (West 2002).

149. See MINN. STAT. ANN. § 504B.171 (West 2002 & Supp. 2013).

150. *E.g.*, MICH. COMP. LAWS ANN. § 554.601a (West 2005); NEV. REV. STAT. ANN. § 118A.340 (West 2013); N.J. STAT. ANN. § 46:8-9.2 (West 2003 & Supp. 2013).

151. *E.g.*, DEL. CODE ANN. 25, § 5314(b)(3)-(4) (2009); MICH. COMP. LAWS ANN. § 554.601a (West 2005); N.J. STAT. ANN. § 46:8-9.2 (West 2003 & Supp. 2013).

152. *E.g.*, DEL. CODE ANN. 25, § 5314(b)(1) (2009); see also Noble-Allgire, *supra* note 131, at 13-14 (2012),

153. See, *e.g.*, MASS. GEN. LAWS ANN. ch. 239 (West 2004 & Supp. 2013).

records;¹⁵⁴ foreclosure disclosure to prospective tenants;¹⁵⁵ foreclosure eviction protections;¹⁵⁶ habitability enforcement action procedures;¹⁵⁷ late fee regulation by statute¹⁵⁸ and liquidated damages case law;¹⁵⁹ manufactured (mobile) home lot rental regulation;¹⁶⁰ personal property of the tenant held by the landlord after the tenant moved;¹⁶¹ police calls alone prohibited as a basis for eviction;¹⁶² pre-lease deposits regulation;¹⁶³ receipts for rent required;¹⁶⁴ relief from eviction forfeiture and cure;¹⁶⁵ residential hotels, shelters and halfway houses treated like landlords;¹⁶⁶ retaliatory eviction burden of proof for rebutting the retaliation presumption;¹⁶⁷ shared utility metering regulation;¹⁶⁸ tenant screening agencies regulation;¹⁶⁹ and waiver of eviction

154. *E.g.*, MINN. STAT. ANN. § 484.014 (West 2002 & Supp. 2013).

155. CAL. CIV. CODE § 2924.85 (West Supp. 2013); MINN. STAT. ANN. § 504B.151 (West 2002 & Supp. 2013); CHI., ILL., MUNICIPAL CODE § 5-12-095 (2008).

156. *See Eviction (Without) Notice: Renters and the Foreclosure Crisis*, NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, <http://www.nlchp.org/content/pubs/12.17.12%20Eviction%20Without%20Notice%20FINAL.pdf> (2012) (last visited September 29, 2013).

157. *See, e.g.*, MINN. STAT. ANN. §§ 504B.375–471 (West 2002 & Supp. 2013).

158. *E.g.*, IOWA CODE ANN. § 535.2 subdiv. 7 (West 2011 & Supp. 2013); MASS. GEN. LAWS ANN. ch. 186, § 15B(1)(c) (West 2003 & Supp. 2013); MINN. STAT. ANN. § 504B.177 (West Supp. 2013); N.M. STAT. ANN. § 47-8-15(D) (West 2003).

159. *See* *Watkins Co., v. Storms*, 272 P.3d 503, 511 (2012); *Local 34 State, Cnty. & Mun. Emps. v. Cnty. of Hennepin*, 246 N.W.2d 41, 43 (1976); *Fanarjian v. Moskowit*, 568 A.2d 94, 97 (N.J. Super. Ct. App. 1989); *Spring Valley Garden Assoc. v. Earle*, 447 N.Y.S.2d 629, 630 (Rockland Cnty. Ct. 1982); *Sun Ridge Investors v. Parker*, 956 P.2d 876, 877–79 (Okla.1998).

160. *E.g.*, MINN. STAT. ANN. §§ 327C.01-15 (West 2011 & Supp. 2013); 68 PA. CONS. STAT. ANN. §§ 398.1–16 (West 2004 & Supp. 2013).

161. *See, e.g.*, MINN. STAT. ANN. §§ 504B.271, 504B.365 (West 2002 & Supp. 2013).

162. *E.g.*, MINN. STAT. ANN. § 504B.205 (West 2002).

163. *E.g.*, MINN. STAT. ANN. § 504B.175 (West 2002).

164. *E.g.*, MINN. STAT. ANN. § 504B.118 (West Supp. 2013); N.Y. REAL PROP. LAW § 235-c (McKinney 2006); CLEVELAND, OHIO, CODE OF ORDINANCES § 375.04 (2001).

165. *See* *Naftalin v. John Wood Co.*, 116 N.W.2d 91, 100 (1962) (construing contracts against forfeiture unless the parties' intent otherwise is clear).

166. *E.g.*, MINN. STAT. ANN. § 327.70 (West 2011); N.M. STAT. ANN. § 47-8-3(V) (West 2003); N.M. STAT. ANN. § 47-8-9(D) (West 2003); *see also, e.g.*, *Gutierrez v. Eckert Farm Supply*, No. C5-02-1900, 2003 WL 21500161 (Minn. Ct. App. July 1, 2003) (affirming that hotel resident was a tenant and not a hotel guest).

167. *See* *Parkin v. Fitzgerald*, 240 N.W.2d 828, 832–33 (1976) (holding that a landlord must establish by a fair preponderance of the evidence, a substantial non-retaliatory purpose, arising at or within a short time before service of the notice to quit, wholly unrelated to and unmotivated by the defendant's protected activity).

168. *E.g.*, MINN. STAT. ANN. § 504B.215 (West 2002 & Supp. 2013); CLEVELAND, OHIO, CODE OF ORDINANCES § 375.05 (2001).

169. *E.g.*, MINN. STAT. ANN. § 504B.235–245 (West 2002); *see also* *Rudy Kleysteuber, Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344 (2007).

for rent by acceptance of part payment of rent.¹⁷⁰ By not addressing import developments in landlord and tenant law throughout the country, the Drafting Committee risks publishing a revised Act that is obsolete. The Drafting Committee should consider these progressive tenant protection statutes and court decisions and incorporate such protections in the draft of the Revised Act.

V. CONCLUSION

There is no doubt that the original Act was a comprehensive reimagining of landlord and tenant law for its time. The number of states that adopted it along with the many more that emulated it is a testament to its importance. As forty years have passed, the Act has gathered some dust and has not kept pace with the progress in landlord and tenant laws. Forty years after its creation, the ULC has the opportunity to be just as bold in the revision as it was in the Act, and by doing so, to be relevant as well. The Committee should strongly consider adopting a progressive approach in the adoption of tenant protections, so that the Revised Act matches the Act's significance in providing uniformity in landlord and tenant laws across state lines.

170. *E.g.*, MINN. STAT. ANN. § 504B.291 (West 2002 & Supp. 2013).