

TENANT'S DEFENSES

I. BREACH OF WARRANTY OF HABITABILITY

In any rental of property for residential use, the law implies that the landlord warrants, or guarantees, that the premises are fit for human habitation. Indeed, the tenant's obligation to pay rent to the landlord is predicated on the landlord's obligation to deliver and maintain the premises in a condition which is habitable. In order for you to make an award for the tenant for breach of the landlord's warranty of habitability, you must find two things:

First: That the landlord breached his (her) (its) warranty; and

Second: That the tenant has suffered monetary damages as a result of the breach or breaches.

1. Breach. The landlord breaches his (her) (its) duty, whenever he (she) (it) allows residential occupation of premises that have a defect in any facility which is vital to residential use. The existence of a material breach depends on the facts of each case; however, such breach must be substantial enough to reduce the fair rental value of the premises. You should take into account

the seriousness of the claimed defects, the length of time they have persisted, when the landlord or his (her) (its) agent knew, or should have known, of the condition or defect, and whether the defects resulted from the improper or abnormal use or conduct by the tenant.

2. Damages. If you find that the landlord breached his (her) (its) warranty of habitability, the tenant is entitled to receive the difference between value of premises as warranted and the value of the residence in its defective condition during the time that such condition existed. The warranty of habitability is not designed as a way to penalize landlords for misbehavior, but it is intended as a method to compensate tenants for their monetary losses sustained as a result of having to occupy an otherwise uninhabitable dwelling.

The agreed upon rent is evidence of the value of the premises as warranted, and you may give that evidence the weight it deserves; however, the agreed upon rent is not evidence of the value of the premises in a defective condition. Also, you should understand that not every defect gives rise to a reduction in the rental value of a dwelling; however, it is possible for a set of substantial defects running together to reduce the fair rental value of

the premises to zero. The fair rental value can never be negative, or less than zero.

Note: If the amount of damages awarded as a result of a breach of the warranty of habitability exceeds the amount of unpaid rent in a "non-payment" case, plaintiff's claim for possession is vitiated, and tenant is entitled to judgment for the difference between its habitability damages and the unpaid rent.

II. VIOLATION OF SANITARY CODE

A violation of the state sanitary code is evidence that the premises are, or were, uninhabitable; because the code sets the minimum standards of structures for human habitation. You may use evidence that the landlord allowed sanitary code violations to persist in determining if the landlord breached his (her) (its) warranty; however, there are situations where code violations may not rise to the level of rendering the premises uninhabitable. A dwelling affected with a substantial sanitary code violation is ordinarily not habitable.

III. BREACH OF COVENANT OF QUIET ENJOYMENT

The law provides that any landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises shall be liable to the tenant for the greater of the tenant's actual and consequential damages or three months rent.

1. Breach. In every tenancy, the law implies that the landlord covenants that during the tenancy the tenant will not be disturbed in his (her) (their) enjoyment of the premises by the landlord or anyone claiming rights through the landlord. In order for you to find that the tenant has proved a breach of this covenant, you must find that the landlord's behavior constituted a serious interference with the defendant's tenancy to the extent that this activity substantially impaired the character and value of the premises. However, the tenant does not have to prove that the landlord actually intended to impair the tenancy, only that he (she) (it) intended to perform the acts which constitute the breach of the covenant.

2. Damages. If you find that the landlord breached the covenant of quiet enjoyment, you must then determine the amount of the tenant's damages. Tenant's damages are the monetary losses that flow from the wrongful act or acts of the landlord. If you find that three months rent exceeds the actual damages that the tenant has sustained, you should award the tenant three months rent; otherwise, you should award the tenant his (her) (its) actual damages. The tenant is only entitled one such recovery, even if more than one act complained of breached the covenant.