

# **LIBRARY**

*Graham Realty, Inc. v.  
Brenda Chapin*

## Franklin Real Property Law

### § 500. Warranty of habitability

1. In every written or oral lease or rental agreement for residential premises, the landlord shall be deemed to warrant that
  - (a) the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties; and
  - (b) the occupants of such premises shall not be subjected to any conditions that would be dangerous, hazardous, or detrimental to their life, health, or safety.
2. Any agreement by a lessee or tenant of a dwelling waiving or modifying the rights as set forth in this section shall be void as contrary to public policy.
3. In determining the amount of damages sustained by a tenant, the court shall not require expert testimony.

## **Franklin District Court Act**

### **§ 240. Housing Division of the Franklin District Court**

A division of the court shall be devoted to actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards.

All summary proceedings to recover possession of residential premises or to remove tenants therefrom and to render judgment for rent due, including those cases in which a tenant alleges a defense relating to a stay of eviction proceedings or any action for rent abatement upon failure to make repairs, shall be brought in the Housing Division of the Franklin District Court.

Regardless of the relief originally sought by a party, the court may employ any remedy, program, procedure, or sanction authorized by law for the enforcement of housing standards that are effective to accomplish compliance or to protect and promote the public interest. This shall include, but not be limited to, the reduction of rent through abatement as well as the imposition of remedial and punitive damages.

**Virgil v. Landy**  
Franklin Court of Appeal (1997)

Defendant appeals from a judgment rendered by the Housing Division of the Franklin District Court. The court ordered defendant landlord to pay plaintiff damages in the amount of \$4,945 as reimbursement of all rent paid and additional compensatory damages. The award covered a 14-month period during which plaintiff rented a residential apartment in defendant's apartment building. On appeal, defendant raises two issues: first, whether the court correctly calculated the amount of damages; and second, whether the court's award to plaintiff of the entire amount of rent paid to defendant was proper since plaintiff remained in possession of the apartment for the entire 14-month period.

In October 1995, plaintiff began occupying an apartment in defendant's apartment building. Plaintiff has paid all rent due under her tenancy. Upon moving into the apartment, plaintiff discovered a broken kitchen window. Defendant promised to repair it, but, after waiting a week and fearing that her two-year-old grandchild might cut himself on the shards of glass, plaintiff repaired the window at her own expense. After moving in, plaintiff discovered that the toilet would flush only by dumping pails of water into it. The toilet remained mechanically inoperable throughout the period of plaintiff's tenancy. In addition, the bathroom light and wall outlet were inoperable. Plaintiff also discovered that the water pipes leaked down the walls of her back bedroom. As a result of this leakage, a large section of plaster

fell from the back bedroom ceiling onto her bed and her grandson's crib. These conditions were brought to the attention of the defendant, but he never corrected them. Plaintiff moved her and her grandson's bedroom furniture into the living room and ceased using the back bedroom.

The court held that the state of disrepair of plaintiff's apartment, which was known to the defendant, substantially reduced the value of the leasehold from the agreed rental value and constituted a breach of the implied warranty of habitability. The district court based its award of damages on the breach of this warranty and on breach of an express contract. Defendant argues that, because plaintiff never abandoned the demised premises, it was error to award her the full amount of rent paid.

A lease is a contract between the landlord and the tenant wherein the landlord promises to deliver and maintain the demised premises in habitable condition and the tenant promises to pay rent for such habitable premises.

In the rental of any residential dwelling unit an implied warranty exists in the lease, whether oral or written, that the landlord will deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean, and fit for human habitation. *See* Franklin Real Property Law § 500. The implied warranty of habitability covers all defects in the essential

facilities of the residence. This implied warranty of habitability cannot be waived.

A substantial violation of an applicable housing code shall constitute prima facie evidence that there has been a breach of the warranty of habitability. One or two minor violations standing alone that do not affect the health or safety of the tenant shall be considered *de minimis* and not a breach of the warranty.

Regardless of whether there are Housing Code violations, in determining whether there has been a breach of the implied warranty of habitability, courts should inquire whether the claimed defect has an impact on the safety or health of the tenant.

In order to bring a cause of action for breach of the implied warranty of habitability, the tenant must first show that he or she notified the landlord of the deficiency or defect not known to the landlord and allowed a reasonable time for its correction.<sup>1</sup>

The statute, Franklin Real Property Law § 500, and its companion provision, § 240 of Franklin District Court Act, give the court wide latitude in assessing damages. The measure of rent abatement damages shall be the difference between the value of the dwelling as warranted and the value of the dwelling as it exists in its defective condition. In determining the fair rental value of the dwelling as warranted, the

court may look to the agreed-upon rent as something the two parties have agreed to as proper for the premises as impliedly warranted. Then the court should consider testimony and other evidence to determine the percentage reduction of habitability or usability by the tenant attributable to the defects.

In determining the percentage reduction of habitability, the trial court should consider the area affected, the amount of time the tenant is exposed to the defect, the degree of discomfort and annoyance the defect imposes, the quality of the defect as health-threatening or just intermittently annoying, and the extent to which such a defect causes the tenant to find the premises uninhabitable. For example, damages are recoverable when the tenant cannot bathe comfortably because there is inadequate hot water, or must worry about insect infestation spreading disease, or must avoid certain rooms if there is inadequate weather protection.

The tenant's damages are calculated by reducing the agreed rent by this percentage reduction of habitability, and multiplying the difference by the number of months of occupancy. The tenant will be liable only for the reasonable rental value, if any, of the property in its imperfect condition during the tenant's period of occupancy.

Damages for discomfort and annoyance are not susceptible to precise calculation. For that

bringing suit to the landlord, who can better afford to bring the action, and to then raise the breach of the implied warranty of habitability as a counterclaim.

---

<sup>1</sup> As we held in *Rosenbaum v. Chavkin* (1990), a tenant may, where there has been a breach of the implied warranty of habitability, withhold the payment of rent. That permits the tenant to shift the burden and expense of

reason, the damages awarded for rent abatement, including discomfort and annoyance, may not exceed the total rent otherwise due. Accordingly, because we hold that a 100 percent rent abatement is the maximum that may be awarded to a tenant in an ordinary breach of implied warranty case, we reverse the trial court's decision awarding \$1,500 in additional compensatory damages.

Separate damages, however, are available for remedial measures taken by the tenant when the landlord is notified of the defect but fails to remedy it within a reasonable time, and the tenant has incurred out-of-pocket expenses to remedy the defect. In this case, the tenant paid for the repair of a window. Accordingly, the trial court's award of \$225 for remedial measures was proper.

Punitive damages may also be awarded in the proper circumstances to punish conduct that is morally culpable. Such an award serves to deter a wrongdoer from repetitions of the same or similar actions. And it tends to encourage prosecution of a claim by a victim who might not otherwise incur the expense or inconvenience of private action.

As we have repeatedly held, when a landlord, after receiving notice of a defect, persistently fails to make repairs that are essential to the health and safety of the tenant, the landlord is morally culpable and an award of punitive damages is proper. *See Main v. Stocker Realty* (Franklin Court of Appeal, 1996). When such behavior points to the bad spirit and wrong intention of the defendant, and would support a

finding of willful and wanton or fraudulent conduct, punitive damages may be increased.

The trial court denied an award to plaintiff of punitive damages without explaining why. The record evinces a pattern of intentional conduct on the part of defendant for which the term "slumlord" surely was coined. Defendant's conduct was culpable and demeaning to plaintiff and clearly expressive of a wanton disregard of plaintiff's rights.

The trial court found that defendant was aware of defects in the essential facilities of plaintiff's apartment and promised plaintiff that repairs would be made, but never fulfilled those promises. These findings point to the bad spirit and wrong intention of the defendant, and would support a finding of willful and wanton or fraudulent conduct. We remand to give the trial court the opportunity to reconsider or explain its refusal to award punitive damages.

Affirmed in part, reversed in part, and remanded.

**Bashford v. Schwartz**

Franklin Court of Appeal (2001)

This appeal is from an order of the Housing Division of the District Court, which denied a motion by petitioner landlord to sever respondent tenant's counterclaims. The issue presented is whether the aggrieved tenant may raise in this summary eviction proceeding a counterclaim seeking damages for the loss of property that allegedly occurred as a result of the landlord's failure to provide adequate security.

The tenant stated that for a number of months she had complained to the landlord that the front door to her apartment was insecure and required replacement. This was never done. She stated that following her complaints an intruder forced open her front door and burglarized her apartment. Respondent asserts that she is entitled to damages for loss of property based on the landlord's failure to replace the front door.

While tenants may, in this nonpayment proceeding, counterclaim for damages sustained by reason of landlord's breach of the implied warranty of habitability as embodied in § 500 of the Franklin Real Property Law, the proper measure of those contract damages is the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach. *See Virgil v. Landy* (Franklin Court of Appeal, 1997).

Where questions of negligence, proximate cause, and damages are contested and require discovery and proof that would delay the summary proceedings, those claims are more appropriately tried outside the limited sphere of the landlord-tenant proceeding. While § 240 contains language giving the Housing Division Court authority to "employ any remedy," the point is that these are *summary* proceedings intended to allow quick and effective resolution of traditional landlord-tenant disputes and enforcement of the Housing Code. The Housing Division of the District Court, according to the legislation that created it, is "devoted to actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards." (Franklin District Court Act § 240).

Reversed.

