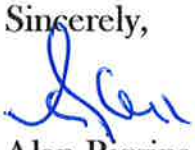
To Laws and Rules Committee of the Common Council,

I am writing about the good cause eviction legislation that you are considering and ask that this letter be read at the public hearing that is scheduled for October 20. I have heard that your majority leader has said that this proposal creates rules for evictions that do not currently exist and that it only adds a requirement that tenants have to be given a reason why they are being evicted. He has also said that now there is no such requirement and that tenants can be evicted without any reason. This is not true.

I have attached copies of a number of documents that are available by a simple search on google. Many other documents are also available if you do your research. What you will find is that detailed rules for evictions are outlined in New York's real property law and under the law, tenants already cannot be evicted without a valid reason. The law you are proposing is unenforceable and will create chaos in landlord tenant court for no good reason.

I urge you to do your own research before you simply accept the incorrect information that is being provided by Mr. Scott-Childress and others.

Sincerely,



Alan Riggins

305 Hurley Avenue

Kingston, New York

# LANDLORD'S GUIDE TO HOLDOVER SUMMARY PROCEEDINGS

## For Courts Outside New York City

New York State Unified Court System

DIVISION OF COURT OPERATIONS
OFFICE OF TRIAL COURT OPERATIONS

SEPTEMBER 2007

# Table of Contents



LABEL FOR LOCAL COURT INFORMATION

# Introduction

**The New York State Unified Court System** has published this booklet to give landlords without a lawyer information about the legal procedures for evicting a tenant from a rental property if the tenant remains in the property after the tenant's right to occupy it has ended. A similar booklet is also available from the Unified Court System for tenants that provides information about procedures for responding when a landlord files an eviction case.

A court case to evict a tenant who remains in a rental property after the tenant's right to occupy the rental property has ended is called a Holdover Summary Proceeding.

In this kind of lawsuit, the landlord asks the judge to grant a judgment that will allow the landlord to evict the tenant. The judge may order the tenant to pay rent to the landlord for the amount of time that the tenant occupied the property after the rental term ended.

This booklet can help if you are a landlord, your tenant has failed to leave your rental property after the tenant's right to occupy the property has ended, and you have decided to evict the tenant by starting a Holdover Summary Proceeding in court. You may also want to ask for help from the Court Clerk's Office, which may be able to answer some of your questions about the lawsuit. Please keep in mind, however, that court staff are not allowed to give legal advice, and so may not be able to answer all of your questions.

If you feel you need legal advice at any time during your case, talk with a lawyer. If you cannot afford a lawyer, or are unsure how to find one, these resources can help you:

- Go to www.lawhelp.org/ny/;
- Call the New York State Bar Association Lawyer Referral Service (toll free) at 1-800-342-3661;
- Go to www.nycourthelp.gov and click on "Lawyers";
- Go to www.nycourts.gov/attorneys/nybarassociations.shtml;
- Ask at any courthouse about lawyer referral services.

A Holdover Summary Proceeding is for evicting a tenant. As a landlord, if you want to sue for unpaid rent or for money to pay for damages to the rental property that the tenant caused and are not *seeking to evict the tenant*, a Holdover Summary Proceeding is the wrong type of lawsuit. Do not use this booklet if that is your situation. Ask the Court Clerk's Office for more information.

# Which Courts Handle Holdover Summary Proceedings?

A landlord must start the case where the rental property is located.

| Rental Property Location | Court |
|---|---|
| Village | * Village Court |
| Town | Town Court |
| City | City Court |
| Nassau County | District Court |
| Part of Suffolk County with District Court | District Court |
| Part of Suffolk County without District Court | Town or Village Court |

* If a village does not have a Village Court, the summary proceeding can be started in the Town Court of the town that surrounds the village.

If a Holdover Summary Proceeding is started in a City Court or District Court, a landlord that is a corporation or a voluntary association ***must*** appear in court with a lawyer for the case. If the case is started in a Town Court or Village Court, however, a landlord that is a corporation may appear in court either by an attorney or by any authorized officer, director, or employee.

# What to do Before Starting a Holdover Summary Proceeding

**Procedure for rentals without written lease or other rental agreement:** The tenant's right to occupy the rental property ends when the lease or other rental agreement ends and is not renewed. As a landlord, you may start a Holdover Summary Proceeding to evict the tenant immediately after that date if the tenant fails to leave *unless the lease or other rental agreement says that you have to give the tenant additional notice of when to leave.*

**Procedure for rentals with written lease or other rental agreement:** Before starting a Holdover Summary Proceeding, a landlord must give the tenant a Notice to Terminate.

There are two types of Notices to Terminate and a landlord is allowed to use either one:

- Oral Notice to Terminate - You may speak to the tenant in person, tell the tenant that the right to occupy the property has ended, and tell the tenant the date the tenant must leave.
- Written Notice to Terminate - You may have someone give the tenant a written notice telling the tenant that the tenant's right to occupy the property has ended and giving a date when the tenant has to leave. The written notice should be delivered to the tenant in the same way as the Notice of Petition and Petition. See pages 4 and 5 of this booklet for the rules on delivering or "serving" court papers. You ***are not*** allowed to give the tenant a Written Notice to Terminate.

The date when the tenant has to leave must be at least one full rental period from the date the tenant gets the Notice to Terminate. For example, for a month-to-month tenancy in which the tenant is given a Notice to Terminate on May 31st, the date to leave cannot be earlier than June 30th.

### *Important Note:*

- If you accept a full or partial rental payment from the tenant after giving the tenant a Notice to Terminate, a judge is allowed to decide that a new rental agreement has been put into effect and may dismiss your Holdover Summary Proceeding.

A Written Notice to Terminate form and instructions are included in the Forms and Instructions section of this booklet.

# How to Begin a Holdover Summary Proceeding

A landlord must file two court forms to begin a Holdover Summary Proceeding: (1) a Notice of Petition - Holdover; and (2) a Holdover Petition to Recover Possession of Real Property.

The two court forms and instructions for filling them out are included in the Forms and Instructions section of this booklet.

Bring your completed Notice of Petition and Petition to the court. If the tenant was given a Written Notice to Terminate, attach a copy of it to the Petition.

There will be a fee for filing the court papers. If you are unsure of the amount, you can contact the Court Clerk's Office for this information.

A court clerk will assign an index number or a docket number to your case. You must write this number on the Notice of Petition and Petition before you have them "served" on the tenant. (More information about "service" is provided below.) You must also include this number on all other papers that you file with the court about this case.

The court clerk will assign a date for your case to be heard in court.

The next step is for you to deliver or "serve" the court papers on the tenant.

## "Serving" the Court Papers

There are only three ways to deliver or "serve" a Notice of Petition and Petition in a Holdover Summary Proceeding. A Written Notice to Terminate also should be served in one of these three ways.

As a landlord, you must get a friend or licensed process server to give the papers to every tenant named in the documents. ***You cannot serve the tenant yourself***. Your friend must be more than 18 years old and may not have served more than five legal papers in the year to be able to serve your papers. If you wish to hire a process server, you may look in the yellow pages of the phone book to locate one.

- **Personal Delivery.** The person who serves the papers must first try to give the papers to the tenant personally, by giving them to the tenant in his/her hand. The papers can be handed to the tenant anywhere.

- **Substituted Service.** If the person serving the papers tries to serve the tenant at home and the tenant is not present, the server can give the papers to the person who answers the door as long as (1) the person resides in the apartment; and (2) is of an appropriate age and has appropriate judgment to take the papers. By the next business day, the server must mail two copies of the papers to the tenant, one by regular mail and one by certified mail.

- **Conspicuous Place Service ("Nail and Mail").** If the person serving the papers is unsuccessful on the first try to serve the papers either by personal delivery or substituted service, then he/she must make a second attempt during a different time period. For example, if no one is home during working hours (9:00 a.m. to 5:00 p.m.), the server can return at 7:30 p.m. during non-working hours. After two unsuccessful attempts have been made to serve the person at home either by personal delivery or substituted service, the server may then use conspicuous place delivery. This is also known as "Nail and Mail."

  "Nail and Mail" requires that a copy of the papers be attached to the door of the actual residence of the tenant or be slipped under the entrance door of that residence. By the next business day, the server must mail two copies of the papers to the tenant, one by regular mail and one by certified mail.

### *Important rules about "serving" the court papers:*

- The court papers cannot be served on a Sunday, Sabbath day, or any other day of religious observance.

- The person who serves the court papers must complete an Affidavit of Service form for each person served. An Affidavit of Service form and instructions is included in the Forms and Instructions section of this booklet. After completing the form, the person who served the papers must sign the Affidavit of Service before a Notary Public, and have it notarized. The completed Affidavit of Service must be submitted to the court within three days of the personal delivery or mailing.

- The Notice of Petition and Petition must be served no more than twelve days and no less than five days before the court date shown on the Notice of Petition.

If the papers are not served as described above, the tenant may tell this to the court clerk or judge as a Defense to the Holdover Summary Proceeding. You will read more about Defenses later in this booklet.

NYCOURTS.GOV

Find the Help You Need to Represent Yourself in NY Courts

The information on this page is being updated and not accurate. See the Housing Stability and Tenant Protection Act of 2019.

# Holdover Notices

Most of the time you must give the tenant a written notice before you can start a holdover case to get rid of the tenant. If you have to give the tenant a notice, there are different ones and you must give the tenant the right one. The notice must be delivered to the tenant the right way. Visit How Legal Papers Are Delivered.

If the tenant or occupant doesn't move out by the deadline in the notice, you can start a holdover case.

## Notice to Cure

If the tenant has done something that is not allowed by the lease you must give the tenant a written notice called a Notice to Cure. Examples of when you use this Notice are if the tenant has a pet, or a washing machine that you did not agree to, or the tenant is too loud all the time. The Notice to Cure tells the tenant what he or she is doing wrong and gives the tenant 10 days to fix the problem. If the tenant fixes the problem, the tenant can stay and you can't start the case. If the tenant doesn't correct the problem by the deadline in the notice, you must give the tenant a second written notice called a Notice of Termination before you can start a case.

## Notice of Termination

If the tenant never had a lease, or had a lease but you collected rent after it ended you must give the tenant a Notice of Termination. You do not serve a Notice to Cure. If you want to evict a tenant who did something not allowed by the lease, you must give the tenant a Notice to Cure before you can serve a Notice of Termination.

A Notice of Termination is given to a tenant to end the tenancy. The notice tells the tenant the reason, the date that the tenant must move, and that a case will be started if the tenant doesn't move by the deadline. Give the tenant at least 30 days notice to leave. The last day in the notice must be the last day of a rental period. For example, if the tenant pays rent on the 15th of every month then the last day should be the 14th of the month.

Taking the rent after the termination date in the notice restarts the tenancy. The tenant can tell this to the court and your case may be dismissed.

## Notice to Quit

If someone is living in the home that you didn't rent to, you must serve a Notice to Quit. The Notice to Quit must tell the occupant that he or she has 10 days to move and must give the reason. The reason is either that the occupant has to move because he or she is a licensee or a squatter.

A licensee is someone that the tenant invited to live in the home without your permission. If the property is outside NYC, there is a free DIY (Do-It-Yourself) Form program to make a Notice to Quit for a licensee outside NYC.

A squatter is someone that started living in the home without anybody's permission. There is a free DIY (Do-It-Yourself) Form program to make a Notice to Quit for a Squatter outside NYC.

Related Information:

- Starting a Case
- How Legal Papers Are Delivered
- Tenant Questions & Answers: Holdover Eviction Cases in New York State

Web page updated: November 19, 2019

# Tenant Defenses to Evictions in New York

If you're a renter getting evicted in New York, you need to learn if you have legal grounds to fight your eviction. Here's how.

By Beth Dillman



In New York, a tenant can be evicted for not paying rent or for violating the lease or rental agreement. A tenant may have a defense available to challenge an eviction for one of these reasons.

Eviction laws vary depending on whether the rental property is located within New York City or outside the city, and whether the property is covered by some kind of state or local rent regulation. This article provides general information for evictions within the state of New York. For further information or questions, see the resources below.



## Grounds for Eviction in New York

A tenant can be evicted in New York for several different reasons, the most common of which are failing to pay rent or violating the lease. In order to legally evict a tenant, a landlord must get a judgment from the court allowing the eviction to occur. Before the landlord can file the eviction lawsuit with the court, the landlord must give the tenant notice.

### Eviction for Nonpayment of Rent

Before a landlord can evict a tenant for failing to pay rent, the landlord must give the tenant a fourteen-day notice, or demand for rent. The notice must state that the tenant has 14 days to pay rent or move out of the rental unit. If the tenant does not pay the rent or move out of the rental unit within the 14 days, the landlord can begin eviction proceedings against the tenant (see N.Y. Real Prop. Acts § 711(2)).

### Eviction for Lease Violations

If the tenant violates the lease, the landlord must give the tenant a ten-day notice that allows the tenant to fix the violation. If the tenant fixes the violation within the ten-day period, the landlord must not file the eviction lawsuit. If the tenant does not fix the violation within the ten-day period, the landlord must then give the tenant a notice of termination. The notice of termination must state that the tenant has at least 30 days to move out of the rental unit. If the tenant has not moved out of the rental unit by the end of the 30 days, the landlord can then file an eviction lawsuit with the court. See the New York Courts self-help center for holdover notices for more information about lease violations outside of New York City. For information on lease violations within New York City, see the book *New York City Landlords and Owners*, page 8, published by the New York City housing court.

Examples of lease violations include having a pet when none are allowed or having a washing machine when expressly prohibited by the lease.

### Eviction Process

To begin eviction proceedings, the landlord must file a petition with either the district court or housing court of the county in which the rental property is located. The court will assign a time and date for a hearing before a judge and will notify the tenant. If the tenant wishes to challenge the eviction, the tenant must attend the hearing. At the hearing the judge will listen to both the landlord and the tenant and will make a final decision regarding the eviction.

The tenant may find that challenging the eviction is not always the best option. The tenant might have to pay the landlord's court and attorney's fees if unsuccessful in court. The tenant could also receive a negative credit rating and could be turned down for future housing. The best option for the tenant might be to try to talk to the landlord and negotiate a deal outside the court system. Many communities have free or low-cost mediation services that handle landlord-tenant disputes; local resources are available through the website mediate.com and the American Arbitration Association. The mediation faqs on the Nolo site provide more information on the subject.



## Eviction Defenses in New York

A tenant may have a defense available if being evicted because the tenant failed to pay rent or violated the lease.

### Landlord Evicts Tenant with "Self-Help" Actions

It is illegal in New York for a landlord to evict a tenant through any means other than obtaining a court order from a judge. A landlord cannot turn off the utilities to the rental unit or change the locks on the doors or do anything that would interfere with the tenant's access to the property or use of the property. This type of behavior is often referred to as a "self-help" eviction. If a landlord attempts to evict a tenant with a "self-help" eviction, the tenant could sue the landlord for damages (see N.Y. Real Prop. Law § § 235 and 853). The Nolo article Illegal Eviction Procedures in New York has more information on the subject.

### Landlord Does Not Follow Proper Eviction Procedures

When evicting a tenant, it is very important that a landlord carefully follows all the procedures set forth in New York law. Otherwise, the eviction may not be valid. For example, a landlord must give the tenant a three-day notice before evicting a tenant for failing to pay rent. If the landlord does not give the tenant any notice but files the eviction lawsuit anyway, the tenant can use lack of notice as a defense to the eviction. The eviction lawsuit would stop, and the landlord would be required to give the tenant a three-day notice. If the tenant still does not pay rent, the landlord can file a new eviction lawsuit with the court.

Keep in mind that this type of defense does not completely stop a justified eviction; it simply delays it. As soon as the landlord fixes the deficient procedure, the eviction will proceed as normal.

### Landlord Evicts Tenant for Not Paying Rent

A tenant who is being evicted for failing to pay rent may have a defense available.

#### Tenant Paid Rent in Full

After a tenant fails to pay rent on time, a landlord is required to give the tenant a three-day notice that states that the landlord will begin an eviction lawsuit unless tenant pays rent or moves out of the rental unit within three days. If the tenant pays rent during the three-day time period, the landlord should not proceed with the eviction (see N.Y. Real Prop. Acts § 711(2)). The tenant should ask for a time-stamped receipt when paying rent. This way, if the landlord proceeds with the eviction anyway, the tenant can use the receipt as proof that the rent was paid during the appropriate time period.

#### Landlord Did Not Maintain the Rental Unit

In New York, a landlord is required to maintain a rental unit in a fit and habitable condition. This means the landlord must supply the rental unit with the necessary utilities, including running water and heat, and then make any necessary repairs as needed (see N.Y. Real Prop. Law § § 235 and 235-b).

If the landlord fails to make necessary repairs or supply necessary services to the rental unit, the tenant may have a few options:

1. The tenant may be able to withhold rent until the landlord makes the necessary repairs. The tenant should notify the landlord in writing of the repairs that are needed and give the landlord a reasonable amount of time to make the repairs. If the landlord does not make the repairs, the tenant can withhold rent until the repairs are made.
2. The tenant may choose instead to make the necessary repairs and then deduct the cost of the repairs from the rent. Again, the tenant should notify the landlord in writing of the repairs that are needed and give the landlord a reasonable amount of time to make the repairs. If the tenant chooses to make the repairs and then deduct the cost of the repairs from the rent, the tenant should keep a copy of all receipts and invoices and provide the landlord with copies of the same.

If the tenant chooses either of these options, the tenant should probably also talk to a lawyer to ensure that the tenant is following best practices.

If the landlord tries to evict the tenant after the tenant exercises one of these options, the tenant can defend against the lawsuit by showing that the landlord did not maintain the rental unit according to the law. For more information on this subject, see the article New York Tenant Rights to Withhold Rent or "Repair and Deduct," published by Nolo.

### Landlord Evicts Tenant for Violating the Lease Agreement

A landlord must give the tenant a ten-day notice to cure before beginning an eviction lawsuit because of a lease violation. If the tenant fixes the lease violation within ten days, the landlord must not proceed with the eviction. If the landlord proceeds with the eviction anyway, the tenant can use proof that the violation was fixed within the appropriate time frame as a defense against the eviction.

### Landlord Evicts the Tenant Based on Discrimination

The federal Fair Housing Act makes it illegal for a landlord to discriminate against a tenant based on race, religion, gender, national origin, familial status (including children under the age of 18 and pregnant women), and disability. The New York State Human Rights Law also makes it illegal for a landlord to discriminate against a tenant based on creed, age, sexual orientation, marital status, or military status. If a landlord tries to evict a tenant based on any of these characteristics, the tenant can use the discrimination as a defense to the eviction. See the Nolo article *Housing Discrimination Prohibited by State and Local Law* for more on laws prohibiting discrimination against tenants.

## Additional Resources for Tenants in New York

It is important to note that the landlord-tenant laws vary within the state of New York depending on whether or not you live within New York City and whether your property is covered by some form of rent regulation. For a comprehensive online resource on tenant rights in New York, see TenantNet. Useful information is also available on the New York State Homes and Community Renewal website. Legal aid organizations throughout the state, such as The Legal Aid Society, can provide free or low-cost legal representation to those who qualify based on income. The Legal Aid Society also has an online self-help center with housing-related questions and answers. The New York Attorney General's office has also published a book with information on tenants' rights, available online. Tenants who live in federally assisted housing should also check out the tenant resource page at HUD.gov.

### Finding Your Local Courthouse

Eviction cases are typically filed in the district court or housing court of the county in which the rental property is located. To find your local courthouse, visit the New York Courts' online court locator. The New York Courts also have an online self-help center with information related to evictions both inside and outside New York City.

If you live within Bronx, Brooklyn, Manhattan, Queens, or Staten Island, your local housing court has published a helpful booklet with information related to landlord-tenant relationships and the housing court.

## When to Hire an Experienced Lawyer

If you have more specific legal questions about your eviction case or the landlord has already retained a lawyer, you should probably also contact a lawyer. A lawyer can handle the whole case or give you advice on how to proceed. A lawyer can also let you know how likely you are to win your case. You may especially want to hire an attorney if you are confident of your case and your lease or rental agreement entitles you to attorney fees if you win in court.

For advice on finding a good lawyer, see the Nolo article *How to Find an Excellent Lawyer*.

Also check out Nolo's Lawyer Directory for New York lawyers who specialize in landlord-tenant law.

## More Information on Evictions and Terminations

For more articles on the subject, see the Evictions and Terminations section of Nolo.com.

For more information on tenant rights, see *Every Tenant's Legal Guide*, by Janet Portman and Marcia Stewart (Nolo).

2008

# The International Trend Toward Requiring Good Cause for Tenant Eviction: Dangerous Portents for the United States?

Andrea B. Carroll
*Louisiana State University Law Center*, acarro6@lsu.edu

# The International Trend Toward Requiring Good Cause for Tenant Eviction: Dangerous Portents for the United States?

*Andrea B. Carroll* *

## I. INTRODUCTION

The developed world has made much progress in improving social conditions over the last several centuries. Safe and plentiful food and water, while once a daily struggle to achieve, are now significantly easier to come by.[1] Technological advancements have made access to medical care more readily available to the masses.[2] Both in Europe and in the United States, times have changed and societies have responded by innovating with new and beneficial legal constructs. But no matter how far modern society progresses, there is one social problem that it seems no society has gotten just right: housing. Almost every major economic player on the globe has faced a self-described housing crisis in the last seventy-five years, and many of these are perceived to continue even today.[3] Although housing crises may take many forms, they often manifest themselves as shortages of

---

* C.E. Laborde, Jr. Associate Professor of Law, Louisiana State University, Paul M. Hebert Law Center. I thank the Southeastern Association of Law Schools and the organizers of the Texas Junior Legal Scholars Conference for the opportunity to present and receive commentary on this Article at their 2007 meetings, as well as the LSU Law Center for its generous research support. I am also grateful to N. Gregory Smith and Vernon Palmer, whose insights were invaluable, and to Brandee Ketchum (LSU Law Center Class of 2008), who provided excellent research assistance.

[1] Recent efforts in global sanitation resulted in a ten percent increase in areas with access to safe water, giving over 1.2 billion additional persons access to clean water in 2004. *See generally* UNICEF PROGRESS REPORT: A REPORT CARD OF WATER AND SAFETY (2006), *available at* http://www.unicef.org/media/files/Progress_for_Children_No._5_English.pdf.

[2] *See* THE WORLD HEALTH REPORT 1999, HEALTH AND DEVELOPMENT IN THE 20TH CENTURY 6 (1999), *available at* http://www.who.int/whr/1999/en/whr99_ch1_en.pdf (attributing more than half of the gains in public health from 1950 to 1992, including declines in infant mortality and disease, to technological advances).

[3] *See, e.g.*, VALERIE KARN & HAROLD WOLMAN, COMPARING HOUSING SYSTEMS 143–44, 148 (1992) (describing housing crises in the United States and United Kingdom).

available and adequate housing, particularly in the rental market.[4] Rental housing shortages then lead to a whole host of other societal problems, including, at the extreme end, homelessness.[5]

Public concern over housing issues has reached an all-time high. Perhaps the most telling recent example comes from the French struggle to solve its housing problems. In early 2007, a group of protesters referred to as "*Les Enfants de Don Quichotte*" ("The Children of Don Quixote") set up a tent city in one of Paris' most vibrant areas. Those involved were protesting the state of the housing market in France.[6] And they were not all homeless. Even some of the social elite of France came out, albeit temporarily, to support the dream advocated by *Les Enfants.*[7] In response to such an undeniable outcry for action on the housing situation in France, the government detailed a proposal to "create a legal right to housing."[8] A bill that went before the French parliament in March, 2007 proposed a legally enforceable *guarantee* of safe and sanitary housing for all.[9] On March 5, 2007, the bill passed, making France only the second European country (behind Scotland) to guarantee such a right.[10]

---

[4] *Id.* at 148.

[5] *See* Curtis Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 U. MIAMI L. REV. 315, 321–24 (1990).

[6] *French PM Vows to Help Homeless*, BBC NEWS, Jan. 1, 2007, *available at* http://news.bbc.co.uk/2/hi/europe/6227237.stm [hereinafter *French PM Vows*]; *see also* John Ward Anderson, *Tent Cities Across France Stake Claims for the Homeless: Chirac Promises A Right to Housing, But Doubt Remains*, WASH. POST, Jan. 11, 2007, at A22 (noting promise by then-presidential candidate Nicolas Sarkozy that, if he were elected, "no homeless people would be on the streets of Paris in two years").

[7] *French PM Vows*, *supra* note 6.

[8] Law No. 2007-290 of March 5, 2007, Journal Officiel de la République Française [J.O.] [Official Gazette of France], March 5, 2007, p. 4190, *available at* http://www.legifrance.gouv.fr (follow "Les autres textes législatifs et réglementaires" hyperlink). The law guarantees the right to "decent and independent" housing to any permanent French resident if the resident is not able to provide or maintain such housing by his own means. *Id.*

[9] *Id.*

[10] The Scottish Executive appointed a task force in 1999 to make recommendations on remedying and preventing homelessness. HOMELESSNESS TASK FORCE FINAL REPORT, HELPING HOMELESS PEOPLE: AN ACTION PLAN FOR PREVENTION AND EFFECTIVE RESPONSE (2002), *available at* http://www.scotland.gov.uk/library3/society/htff.pdf [hereinafter HELPING HOMELESS PEOPLE]. The task force's report grew out of the principle that "everyone in Scotland should have dry, warm, affordable and secure housing[, which] . . . is . . . crucial to family life, physical and mental health, child development, employability and the creation of sustainable communities." *Id.* at 1. As a result of the 2002 report, the Executive enacted The Homelessness Act of 2003. The Homelessness (Scotland) Act, 2003, (A.S.P. 10). The Act extends the right to housing to all homeless persons. *Id.*

The French development is an interesting one, particularly in light of the fact that a multitude of European jurisdictions seem to sympathize with the sentiment behind it. France may be one of the only countries to governmentally guarantee housing, but at least nine European countries have declared it a fundamental right held by all mankind.[11] Even across the Atlantic in the United States, the notion that adequate housing is a core right is taking hold, though certainly more slowly than it has in Europe.[12]

Perhaps the most interesting aspect of the French movement is that, if the government guarantees housing, it must then implement that plan. How is this guaranteed housing to be provided? Not surprisingly, the French plan provides only scant detail about the vehicle

---

[11] *See, e.g.*, BELG. CONST. art. 23 ("Everyone has the right to lead a life in conformity with human dignity. . . . These rights include notably . . . the right to have decent accommodation . . . ."); FIN. CONST. § 19 ("The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing."); 1975 Syntagma [SYN] [Constitution] 21 (Greece) ("The provision of homes to those who are homeless or live in inadequate housing conditions shall be the subject of special care by the State."); Gw. [Constitution] art. 22 (Neth.) ("It shall be the concern of the authorities to provide sufficient living accommodation."); PORT. CONST. art. 65 (2005) ("Everyone has the right for himself and his family to a dwelling of adequate size satisfying standards of hygiene and comfort and preserving personal and family privacy."); CONSTITUCIÓN [C.E.] 47 (Spain) ("All Spaniards have the right to enjoy decent and adequate housing."); REGERINGSFORMEN [RF] [Constitution] 1:2 (Swed.) ("It shall be incumbent upon the public administration to secure . . . housing and education, and to promote social care and social security and a good living environment."); HELPING HOMELESS PEOPLE, *supra* note 10, at 1 (noting the Scottish view of housing as "crucial to family life"); Law No. 89-462 of July 8, 1989, Journal Officiel de la République Française [J.O.] [Official Gazette of France], July 8, 1989, p. 8541, *available at* http://www.legifrance.gouv.fr (follow "Les autres textes législatifs et réglementaires" hyperlink); *see also* Jane Ball, *Renting Homes: Status and Security in the UK and France—A Comparison in the Light of the Law Commission's Proposals*, CONV., Jan.–Feb. 2003, at 38–60 (recognizing the French right to housing as a fundamental right). For international agreements recognizing a fundamental right to housing, see Universal Declaration on Human Rights, G.A. Res. 217A, at 25(1), U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948), *available at* http://www.un.org/Overview/rights.html ("Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing . . . ."); International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A, at 11(1) (Jan. 3, 1976), *available at* http://www.unhchr.ch/html/menu3/b/a_cescr.htm ("The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate . . . housing . . . [and] will take appropriate steps to insure the realization of this right . . . .").

[12] Peter Salins commented that one of the typical concomitants to good cause eviction provisions, rent regulation, "is not only entrenched, it is spreading. Like alien creatures in a science fiction movie, the tentacles of rent regulation have long since wandered from historic epicenters such as New York City and now reach every corner of this nation." Peter Salins, *Reflections on Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 775, 775–76 (1988).

through which the social goal of decent housing for all is to be achieved.[13] The creation of a mass of new public housing is certainly a possibility.[14] But just as likely is the continuation of an old European favorite—maintaining a scheme of good cause eviction, both in the public and private rental housing sectors, to control supply.

The base notion of a good cause eviction scheme is that a landlord's ability to terminate or refuse to renew his tenant's lease, and therefore force the tenant to navigate a possibly perilous housing market to find new accommodations, must be limited substantially.[15] Regardless of the fact that a tenant may have no lease at all, or that the term of the lease he once had may have expired, he may continue in the rental housing unless and until the landlord offers a good enough reason to evict him.[16]

Good cause eviction rules are pervasive in European countries, and are almost universally designed to rectify housing crises, particularly those caused by housing shortages.[17] The evidence, however, demonstrates that they do not solve supply problems, and in fact may even impede achievement of social housing goals by creating new economic problems.

With the proliferation of housing problems all over the globe, and an increased awareness of and call for action on those problems like the one seen in France, a real danger exists that good cause eviction requirements will spread worldwide. Even in the United States, these dangerous schemes have begun to take hold.

This Article seeks to call awareness to that problem and to suggest that further intrusion must be prevented. Part II describes the

---

[13] Law No. 2007-290 of March 5, 2007, Journal Officiel de la République Française [J.O.] [Official Gazette of France], March 5, 2007, p. 4190, *available at* http://www.legifrance.gouv.fr (follow "Les autres textes législatifs et réglementaires" hyperlink).

[14] The French government intends to construct 120,000 new homes per year until 2012 in an effort to implement this new guarantee of housing. *See French PM Vows*, *supra* note 6. In 2000, France spent €19.27 billion on various housing assistance programs, including €2.05 billion in construction subsidies, €5.34 billion in aid to individuals, and €9.39 billion in tax relief. Embassy of France in the United States, Housing in France, *available at* http://www.ambafrance-us.org/atoz/housing.asp.

[15] Kenneth Salzberg & Audrey Zibelman, *Good Cause Eviction*, 21 WILLAMETTE L. REV. 61, 62–63 (1985).

[16] *Id.* Good cause eviction is premised on a "tenant's presumptive right to continue in possession." *Id.*

[17] Housing shortages following World War I led to the adoption of good cause eviction schemes in Germany, the United Kingdom, Sweden, and Italy. *See infra* Part II. In the United States, post-war housing shortages led to the imposition of a good cause eviction scheme in Washington, D.C. *See infra* notes 292–94 and accompanying text.

growing global movement toward limiting tenant eviction to good cause. The law of several European jurisdictions serves to illustrate the varying forms and effects of a good cause eviction scheme. Part III goes on to describe the reasons for which a jurisdiction's adoption of a good cause eviction scheme represents a serious misstep. The negative and substantial long-term economic effects are detailed. Part IV demonstrates that good cause eviction schemes are slowly infecting even American law. Finally, Part V suggests that if we are not successful in warding off the further intrusion of good cause eviction schemes in this country, we will suffer. Good cause eviction rules will fail to solve housing crises here, just as they have in Europe. And just as we are seeing abroad, in the long term, we may end up worse off for their adoption.

## II. THE GLOBAL MOVEMENT TO LIMIT LANDLORD ABILITY TO EVICT OR REFUSE TO RENEW LEASES

Schemes of good cause eviction are quite prevalent throughout Europe. Those countries that have adopted them with the hope of solving serious housing problems are by no means small or insignificant actors on the international scene. Germany, Italy, and France, for instance, all limit the right of a landlord to evict his tenant, or to refuse to renew an expired lease, to good cause.[18] Smaller countries, such as Portugal and Austria, have followed suit.[19]

Precisely what will satisfy the requirement of good cause varies from jurisdiction to jurisdiction. Faulty or culpable behavior on the part of the tenant—such as failing to pay rent for an extended period, conducting illegal activities on the premises, or breaching the lease in some significant way—almost always suffices.[20] Some good

---

[18] *See* D.C. STAFFORD, THE ECONOMICS OF HOUSING POLICY 45 (1978) (describing the English trend toward security of tenure over the last decade).

[19] *See* SANDRA PASSINHAS, EUROPEAN PRIVATE LAW FORUM AT THE EUROPEAN UNIVERSITY INSTITUTE, THE EUROPEANISATION OF PRIVATE LAWS—PORTUGAL 1 (2004), *available at* http://www.eui.eu/LAW/ResearchTeaching/EuropeanPrivateLaw/Projects/TenancyLawPortugal.pdf; BRIGITTA LURGER & ANDREA HABERL, EUROPEAN PRIVATE LAW FORUM AT THE EUROPEAN UNIVERSITY INSTITUTE, THE EUROPEANISATION OF PRIVATE LAW—AUSTRIA 1 (2004), *available at* http://www.eui.eu/LAW/ResearchTeaching/EuropeanPrivateLaw/Projects/TenancyLawAustria.pdf. The European Tenancy Law project, of which both of these articles are a part, is an ongoing research project of the European Private Law Forum at the European University Institute concerned with a comparative assessment of national tenancy laws among European Union countries.

[20] *See, e.g.*, MARÍA ESTHER BLAS LÓPEZ, EUROPEAN PRIVATE LAW FORUM AT THE EUROPEAN UNIVERSITY INSTITUTE, THE EUROPEANISATION OF PRIVATE LAW—SPAIN 10–11, (2004), *available at* http://www.eui.eu/LAW/ResearchTeaching/EuropeanPrivateLaw/Projects/TenancyLawSpain.pdf (Spanish grounds for eviction include, inter

cause eviction schemes even provide for more landlord-focused reasons, including the landlord's desire to demolish or remodel his building, or perhaps even to occupy it himself.[21]

While it may seem at first blush that there really is no common thread among jurisdictions employing the scheme as to what that good cause might be, further study brings a commonality to light. Nearly every jurisdiction that limits landlord eviction to good cause interprets it in a very narrow fashion and heavily skews it in favor of the tenant.

### A. *An Exceptionally Narrow View of Landlord Need as Good Cause*

Perhaps one of the more commonly proffered "good causes" for which landlords seek to evict or fail to renew the leases of their tenants, at least absent some tenant misconduct, is their own need of the premises.[22] Given a property owner's right to use his investment as he so desires, one might expect jurisdictions to be rather liberal in allowing landlord need to provide the good cause necessary to evict a tenant. In fact, precisely the opposite is true. Most jurisdictions with a good cause eviction scheme employ a very restrictive standard. Landlord "need" must, really, be more than need. It must be desperation.

Portuguese law provides an instructive example of the application of the "need" standard. The rights of landlords and tenants in Portugal are set out both in the Portuguese Civil Code and in special statutes, which substantially restrict a landlord's right to bring an end to a lease.[23]

When a landlord and tenant perfect a lease contract without a definite term in Portugal, the law supplies a default term of six

---

alia, failure to pay rent, intentionally causing "unauthorized works in the house," and using the premises for purposes other than that for which they were leased); PASSINHAS, *supra* note 19, at 25 (good cause for eviction under Portuguese law includes, inter alia, failure to pay rent, using the premises for "unlawful, indecent and dishonest practices," and substantially changing the premises).

[21] *See infra* Part II.A–B.

[22] *See, e.g.*, Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.), *available at* http://www.ius.info/EUII/euchr/dokumenti/1995/11/case_of_velosa_barreto_v._portugal_21_11_1995.html.

[23] The Civil Code sets out the basic rules applicable to the landlord-tenant relationship in Portugal. Special statutory schemes, including the Rural Tenancy Regime (Decree-Law 385.88, of 25.10 (1988)), Forester Tenancy Regime (Decree-Law 394/88, of 8.11 (1988)), and Urban Tenancy Regime (Decree-Law 321-B/90, of 15.10 (1990)) expand upon and further those general rules of the Civil Code in particular contexts.

months.[24] But because the law also provides for automatic renewal for successive periods, such a lease essentially becomes a lease of indefinite duration, which lasts until one party gives notice of his contrary intention.[25] The Portuguese tenant may give notice of his intention to quit without proffering any specific reason. He need only comply with a requirement that he give the notice within a particular period before he vacates.[26] Landlords, on the other hand, are not afforded the same freedom. They may terminate *only* when they prove: (1) need in themselves or their descendants to occupy the leased property; (2) need of the leased property to build a home for themselves or their first degree descendants; (3) desire to expand the leased premises or increase the number of leased units, but only if the relevant public authority has already approved an architectural plan; or (4) that public authorities have found the building to be "degraded and, technically or economically, . . . not recommended to be improved."[27]

Even when a Portuguese landlord can make out one of these grounds, however, he may not succeed in retaking the premises. If the landlord seeks to terminate for "residential purposes" (essentially the first and second grounds), he must *also* prove that he has owned the property for more than five years[28] and that he (or his descendants, if he is arguing their need) cannot possibly find "another house (owned or rented)" anywhere "in the area of the judicial districts of Lisboa or Porto or their surrounding areas, or, for another part of the country, in the same city" that will meet their housing need.[29] This latter requirement, of course, is virtually never satisfied, as landlords can nearly always find other, albeit less desirable, accommodations.[30]

---

[24] PASSINHAS, *supra* note 19, at 26. Residential tenancy contracts in Portugal may not provide a term of less than five years; when they do, they are typically considered indefinite term contracts subject to the rules detailed here. *Id.* at 24.

[25] *Id.* at 26.

[26] The length of the notice required depends upon how long the lease has existed. Tenants must generally give six months notice to leave a lease that has lasted more than six years, sixty days for leases lasting between one and six years, thirty days for leases lasting between three months and a year, and one-third of the duration for leases lasting less than three months. CODE CIVIL [C. CIV.] art. 1055 (Port.) (1966); *see also* PASSINHAS, *supra* note 19, at 26.

[27] PASSINHAS, *supra* note 19, at 26–27.

[28] This requirement does not apply where the landlord acquired the property "by hereditary succession." *Id.* at 27.

[29] *Id.*

[30] A landlord's existing cramped living area shared with seven other people, for instance, would likely supply cause for denying his claim to evict tenants under the Portuguese need standard because that landlord has a home. *See generally* Velosa

Moreover, even where a Portuguese landlord meets every one of these exceptionally rigorous requirements—he proves a dire need, five years ownership, and a lack of any other housing possibility—he may have to suffer through a delay before the eviction will be carried out. Portuguese courts are empowered to delay evictions for up to a year "for social reasons."[31] Specifically, if a court finds that contemporaneous enforcement of a valid eviction order would effect "greater prejudice to the tenant than benefits [to] the landlord" or "[w]hen it is the tenant's poverty that motivates the lack of payment of rent" (for which, of course, the landlord could legitimately evict), it is authorized to impose a stay on the eviction.[32] Analyzing such social mores might involve considering the parties' "good faith, the fact that [the] tenant may become homeless, the number of persons living with the tenant, his or her age, his or her health, and, in general, the social and economic condition of the people involved."[33]

The case of *Velosa Barreto v. Portugal*[34] illustrates the breadth and inequity of the Portuguese need standard. Applicant Velosa Barreto inherited a three-bedroom, one-bath home in the Portuguese city of Funchal.[35] The home had been rented for roughly eighteen years before Velosa Barreto became owner, with a rent that increased by only twenty-five percent during that period.[36] Five months after he inherited the home, Velosa Barreto brought an action against the tenant, seeking to end the lease so that Velosa Barreto and his family could occupy the home.[37]

Velosa Barreto argued that his family had a true need for the home, which justified the termination of the tenants' lease.[38] Specifi-

---

Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.) (refusing landlord's request to evict tenant to personally occupy space because landlord had alternative accommodations).

[31] PASSINHAS, *supra* note 19, at 28.

[32] *Id.*

[33] *Id.*

[34] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).

[35] *Id.*

[36] *Id.* The facts of *Velosa Barreto* do not clarify the precise term of the lease on the subject property. Because the Portuguese Civil Code provides for continual tacit renewal in the absence of tenant notice to quit, however, the lease can be likened to an American periodic tenancy. *See* C. CIV. art. 1095 (Port.) (1966), *repealed by* Decree-Law 321-B/90, of Oct. 15, 1990 (reenacting rule as part of new Urban Tenancy Regime).

[37] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).

[38] *Id.*

cally, he pointed to his own unsatisfactory living conditions.[39] At the time of his suit, Velosa Barreto lived in a four-bedroom rental with his wife and son, his mother- and father-in-law, his brother-in-law, and two of his wife's aunts.[40] The quarters were exceptionally crowded.[41] Privacy for all members of the family was virtually nonexistent, and it was not possible for his child to have his own room.[42] All of the parties involved were unhappy, but "resigned" to these living conditions because he and his family had "nowhere else to live."[43]

After the litigation stretched on for nearly six years,[44] the Funchal court denied Velosa Barreto's application for an order authorizing the eviction, finding that he had not sufficiently shown "facts which proved a real need to occupy the house himself."[45] The court particularly noted Velosa Barreto's failure to prove exceptionally strained relations with his in-laws.[46] That the family got along rather well personally and made the best of an ugly situation actually hurt Velosa Barreto.[47] In the absence of proof of all out warfare in the household, the Funchal court concluded that Velosa Barreto and his family had no real "need" for a home of their own.[48]

On appeal to the Lisbon Court of Appeals, the Funchal court's judgment was affirmed.[49] Finally, in 1991, Velosa Barreto appealed to the European Commission of Human Rights,[50] which ultimately referred the case to the European Court of Human Rights.[51]

Velosa Barreto argued before the European Court of Human Rights that the Portuguese court system's refusal to grant him an or-

---

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).

[44] *Id.* The European Court of Human Rights opinion provides no hint as to the reason for the lengthy delay. *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).

[50] *Id.*

[51] *Id.* The European Court of Human Rights was established in 1959 as a mechanism to enforce the Convention for the Protection of Human Rights and Fundamental Freedoms, drafted by the Council of Europe in 1950. Portugal ratified the Convention on Sept. 11, 1978. *See* European Court of Human Rights—The Court, http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/History+of+the+Court.

der allowing termination of the lease amounted to a violation of Article 8 of the European Convention on Human Rights.[52] On its own motion, the Court also examined Velosa Barreto's application to determine whether there might also be a violation of Article 1 of Protocol 1 of the Convention.[53]

Article 8 of the European Convention on Human Rights provides:

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of the national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[54]

Protocol 1 provides similarly:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
> The preceding provision shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.[55]

Velosa Barreto argued that Article 8 implies a right in every family "to a home for themselves alone."[56] He maintained that Portugal's failure to allow him to assert that right by evicting his tenant amounted to an unacceptable intrusion on his rights under Article 8.[57]

---

[52] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).

[53] *Id.*

[54] *See* Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, 213 U.N.T.S. 222.

[55] Convention for the Protection of Human Rights and Fundamental Freedoms Protocol 1, Mar. 20, 1952, Eur. T.S. No. 009. Portugal ratified Protocol 1 on Sept. 9, 1978. *See* Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms—Ratification Dates, http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=009&C-M=8&DF=2/21/2008&CL=ENG.

[56] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).

[57] *Id.*

In assessing Velosa Barreto's application, the European Court of Human Rights was required to examine Portuguese eviction law in some detail.[58] Its role was not to determine whether Velosa Barreto met the legal requirements for eviction; that fell within the province of the Portuguese courts, which "were clearly better placed than the European Court to assess the facts at a given time and place."[59] Rather, the European Court of Human Rights was to determine whether the Portuguese legislation provided a restraint on landlords that rose to a level sufficient to impinge on the benefits they enjoy under the European Convention on Human Rights.[60]

In so analyzing the Portuguese tenancy termination rules, the Court found that the goal of the good cause eviction scheme was "a legitimate [one], namely the social protection of tenants."[61] In essence, the restrictions "tend[] to promote the economic well-being of the country and the protection of the rights of others."[62] Essentially, then, the Court found that Portugal could, in accordance with the language of Article 8, subordinate the right of a private landowner to the economic wellbeing of the country.

To satisfy itself that such subordination was "necessary," as Article 8 requires, the Court looked to the history surrounding the enactment of the Portuguese Civil Code articles restricting eviction to need on the part of the landlord.[63] At one time, such onerous intrusions upon the right of the landowner to retake his property were considered absolutely necessary in light of a severe shortage of housing in Funchal.[64] By the time of Velosa Barreto's action, however, census records demonstrated that no such crisis persisted.[65] Nonetheless, the European Court of Human Rights accepted Portugal's argument that strict tenancy termination provisions continued to be necessary to avoid economic decline.[66] Thus, the Court voted eight to one that Velosa Barreto's Article 8 "right to respect for his family

---

[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*

and private life, his home and his correspondence" yielded to Portugal's need to restrict that right in the interest of economics.[67]

Similarly, the Court found that Protocol 1 allowed for governmental fixing of eviction standards. Although the plain language of the provision prohibits deprivations of "peaceful enjoyment of possessions," it allows for the creation of exceptions states may find necessary to "control the use of property in accordance with the general interest. . . ."[68] In essence, Protocol 1 requires only that the Portuguese eviction rules "strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights."[69] The European Court of Human Rights accepted Portugal's argument that the application of its eviction rules to deprive Velosa Barreto of the right to enjoy the property he owned was merely a "control of the use" of his property.[70] As such, Velosa Barreto's interest fell, again by a vote of eight to one, to his father's tenant.[71]

Thus, in 1995, *thirty-one years after the lease began* and nearly thirteen years after Velosa Barreto inherited the property at issue, he was still unable to assert his right to occupy the property he owned.[72] The effect of the decision, then, is essentially to create a persistent and virtually interminable lease. Velosa Barreto could hardly have shown a more substantial need to occupy his property. Still, it was not enough.

Tenant protections are clearly exceptionally strong under the Portuguese regime. Indeed, commentators well-versed in the country's tenancy law have remarked that "the main feature of the regime is the protection of the tenant, considered to be the weaker party to the contract."[73]

---

[67] *Id.* One dissenter found that the court did not give sufficient weight to the possibility that Velosa Barreto might choose to increase the size of his family, a right the dissenter viewed as an important element of family life. *Id.* The dissent also concluded that the majority did not strike a fair balance between the protecting the right of the landlord (to peaceful enjoyment of his possessions) and the right of the tenant. *Id.*

[68] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] PASSINHAS, *supra* note 19, at 1; *see* Jeremy McBride, *The Right to Property*, 21 EUR. L. REV. HUM. RTS. SURV. 40, 45–47 (1996) (discussing a "remarkably indulgent view . . . of the overriding right of property owners to recover their apartments from tenants").

And the arguably egregiously broad tenant protections that exist in Portugal, surprisingly, are not the most stifling provisions one can find in Europe. The basic Swedish rule of lease termination is that a tenant "enjoys the right to prolong [his lease] contract."[74] A tenant's right to persist on the premises may only be set aside if his reasons for renewing his contract are not as strong as his landlord's reasons for terminating the agreement.[75] Furthermore, landlords are at a significant disadvantage in Sweden because, even under this balancing test, if a landlord rents an apartment dwelling to a tenant on an indefinite duration lease, the landlord's argument that he has true need of the property for his own use will "not be a sufficient reason for terminating the contract."[76] Swedish law does make concessions for a landlord renting out a family home.[77] True need may provide grounds for giving notice to end a lease in these cases, "at least if [the landlord] intends to live [on the premises] permanently."[78] But a person letting an apartment dwelling has no such freedom.

The trend in Europe, then, is to sanction landlord need as a technical way of making out the good cause needed to evict or refuse to renew the lease of a tenant. But the Portuguese and Swedish examples demonstrate that need is viewed so restrictively that, practically speaking, landlord desire to personally occupy the rented premises hardly ever rises to the level of "good cause."

### *B. An Overemphasis on Protection of Weak Tenants*

The history of Italian landlord-tenant law demonstrates quite well the related trend of European tenancy law to overprotect tenants that could be viewed as the least bit socially disadvantaged. Substantial regulation of the law of leases began in Italy shortly after World War I, when financial strife and a short supply of housing created problems in the country's rental housing market.[79] The Italian government responded in 1921 with a double-featured plan that both

---

[74] Jordabalk [JB] [Land Law Code] 12:3 (Swed.). *See* ULF JENSEN, EUROPEAN PRIVATE LAW FORUM AT THE EUROPEAN UNIVERSITY INSTITUTE, THE EUROPEANISATION OF PRIVATE LAW—SWEDEN 3 (2004), *available at* http://iue.it/LAW/ResearchTeaching/EuropeanPrivateLaw/TenancyLawSweden.pdf.

[75] JENSEN, *supra* note 74, at 24.

[76] *Id.* at 22.

[77] *Id.*

[78] *Id.*

[79] UMBERTO BRECCIA & ELENA BARGELLI, EUROPEAN PRIVATE LAW FORUM AT THE EUROPEAN UNIVERSITY INSTITUTE, THE EUROPEANISATION OF PRIVATE LAW—ITALY 1 (2004), *available at* http://www.eui.eu/law/ResearchTeaching/EuropeanPrivateLaw/Projects/TenancyLawItaly.pdf.

controlled rent and prevented termination of tenancy contracts.[80] Even in the post-war economy, that system "was considered an assault on individual property rights."[81] The regime provoked so much outrage that, while it was not expressly held unconstitutional, the Italian Constitutional Court suggested that the regime be jettisoned and replaced with a more practical system for regulating tenancy as soon as practicable.[82]

The post-war Italian system was revamped in the 1970s and a new and complete statute for regulating both residential and commercial tenancies took hold in 1978.[83] The new statute focused primarily on setting standards for rents. Because of this focus, it was dubbed the "*equo canone*" (or "fair rent") law.[84] The scheme was "founded upon the rationale of distributive justice" and thus greatly emphasized tenant need and the right to housing over the desires of landlord-owners.[85] The overt protections given to tenants seemed broad, but perhaps not totally slanted, at least on the face of the statute. Short-term tenancy contracts were not permitted under the *equo canone* law. Parties were not allowed to perfect lease contracts for periods shorter than four years.[86] And the landlord, at least, was bound to continue the lease for the duration of the agreed-upon term.[87] Tenants, in contrast, were permitted to end even a term lease merely by giving six months notice.[88] Regardless of the length of the lease, the most tenant-friendly aspect of the *equo canone* law was that part which took the setting of the rent completely out of the parties' hands. Rent was fixed by law, and was not a subject on which the parties were permitted to come to their own agreement.[89]

However these rent and term restrictions looked on paper, they were applied by the Italian government in a manner exceptionally oppressive to private property owners. And even worse, when rent controls and intrusions into parties' freedom of contract in the form

---

[80] *Id.*

[81] *Id.*

[82] *Id.* The Court further hinted that it would not hesitate to strike down the regime were it not replaced within a reasonable period. *Id.*

[83] *Id.* at 2.

[84] *See id.*; *see also* Kenneth Baar, *Guidelines for Drafting Rent Control Laws: Lessons of a Decade*, 35 RUTGERS L. REV. 723, 735 (1983) (noting that Italy's *equo canone* law was based on the idea that equity would be obtained in the housing market if comparable rents were established for comparable units).

[85] BRECCIA & BARGELLI, *supra* note 79, at 1.

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

of long-term tenancy requirements did not succeed in creating a housing situation that the Italian government found desirable, it resorted to layering suspension of eviction orders on top of the rent and term provisions in a manner that further prejudiced landlords.[90]

The case of *Spadea v. Italy* perfectly demonstrates the problem of Italian focus on the socially disadvantaged party to the lease contract.[91] Applicants Spadea and Scalabrino purchased two residential flats in Milan, Italy in April of 1982.[92] The flats were rented at the time of the purchase, with leases set to expire on December 31, 1982.[93] In October of that year, the applicants properly gave notice to the tenants occupying the flats, requesting that they vacate the premises at the expiration of the lease term.[94] The tenants, "elderly ladies of modest means," refused to budge.[95] Spadea and Scalabrino requested eviction orders from a local magistrate, and those orders were issued in January of 1983.[96] Two years later, in 1985, the tenants still refused to vacate and the Italian government would offer no police assistance in securing the eviction.[97] Moreover, in February of 1985, the Italian government suspended enforcement of all eviction orders for another eleven months.[98] Shortly after that eviction enforcement order was lifted, another came into effect.[99] And then yet another.[100] As the years wore on, Spadea and Scalabrino were forced to buy another flat just so as to have a place to live.[101]

Spadea and Scalabrino finally recovered possession of their flats, six and seven years after the leases on them terminated.[102] Even then, it was not a result of a change in Italian law, but rather as a result of fortuity. One tenant died and the other eventually left voluntarily.[103]

If the *Spadea* case were an exceptional one, we might lament it as an unfortunate, but not dangerous, set of circumstances. When viewed as anomalous, it seems, perhaps, less egregious. Unfortu-

---

90 *Id.* at 14–15.
91 Spadea v. Italy, App. No. 12868/87, 21 Eur. H.R. Rep. 482 (1996).
92 *Id.* at 484.
93 *Id.*
94 *Id.*
95 *Id.*
96 *Id.*
97 *Spadea*, 21 Eur. H.R. Rep. at 484.
98 *Id.*
99 *Id.*
100 *Id.*
101 *Id.*
102 *Id.*
103 *Spadea*, 21 Eur. H.R. Rep. at 484.

nately, a glance at even a small portion of the Italian landlord-tenant jurisprudence quickly proves that what happened to Spadea and Scalabrino was not at all rare. Scores of landlords met similar fates under the Italian tenancy regime of the 1980s. In another Italian eviction case that made its way to the European Court of Human Rights—*Scollo v. Italy*[104]—the plaintiff-landlord complained of eviction staggering and suspension orders that prevented him from evicting a tenant whose lease had ended more than eleven years earlier.[105] Much like the applicants in *Spadea*, Scollo regained possession of his property, eleven years after the termination of the lease and after seven years without full payment of the agreed upon rent, solely because the tenant voluntarily left.[106] Likewise, in *Immobiliare Saffi v. Italy*,[107] the applicant company regained possession of its property thirteen years after the lease ended.[108] Police assistance was never given to secure the eviction, but the tenant eventually died.[109]

In short, the Italian regime of the late 1970s and 1980s was one that effected serious oppression of landlord interests in the name of social justice and economic development. The series of eviction suspension orders issued during this time were often referred to as necessary and "emergency" measures to quell a serious shortage of low-income housing.[110] But the fact is that the purportedly "emergency" provisions remained in effect for more than forty years.[111] Subordination of landlord interests, then, essentially became the norm in Italy.

The *equo canone* regime—both in its obsessive rent controls and corollary eviction suspension orders—was soon recognized as an unacceptable one. Cases such as *Spadea*, *Scollo*, and *Immobiliare Saffi* illustrated the flaws of the Italian tenancy laws and eventually led people to conclude that the regime's effect was the opposite of that intended. In practice, it failed to solve the problem of a small supply of adequate low-cost housing, but rather "dissuaded landlords from letting their property, thus increasing demand."[112]

For these reasons, the *equo canone* regime was set aside in 1998, at least insofar as residential properties are concerned, in favor of a

---

[104] App. No. 22774/93, 22 Eur. H.R. Rep. 514 (1999).
[105] *Id.* at 515–16.
[106] *Id.* at 516.
[107] App. No. 22774/93, 30 Eur. H.R. Rep. 756 (1999).
[108] *Id.* at 759.
[109] *Id.*
[110] *See id.* at 758; *Scollo*, 22 Eur. H.R. Rep. at 525 (Mr. H.G. Schermers, dissenting); *see also* BRECCIA & BARGELLI, *supra* note 79, at 1–2.
[111] McBride, *supra* note 73, at 46.
[112] BRECCIA & BARGELLI, *supra* note 79, at 2.

new regime.[113] The goal of Italy's new tenancy law was to effectuate a "trade off" between the typically diametric interests of landlords and tenants.[114] Whether the regime actually accomplishes this lofty goal is a matter on which interested parties may never come to agreement.

The 1998 statute essentially relies on a combination of duration and termination provisions to effectuate the tenant protection that Italy has long desired as a matter of social policy.[115] Residential lease contracts may not establish a term of less than four years.[116] This is already an obviously onerous provision for landlords. Typically, however, it gets even worse for them. The statute allows a landlord to retake his property after the termination of the lease, provided he has given the tenant at least six months notice to vacate.[117] The problem is that this notice will only be effective if the landlord has "legitimate grounds" for terminating the lease.[118] The expiration of the lease term, surprisingly, is insufficient to supply such a ground. Essentially, a landlord will only be permitted to retake his premises after the expiration of the original lease when he can demonstrate that his "interests take priority over [the] tenant's right to housing."[119] In effect, the landlord is forced to show some sort of "good cause" for evicting a tenant whose term lease has expired.

This "good cause" or "legitimate ground," as one might imagine given Italy's historical penchant for protecting tenants, garners a narrow definition in Italian law, though perhaps it is not so narrow as in Portugal. A landlord's desire (presumably, *need* is not required) to "use the apartment for himself or his family members for housing or professional purposes" will suffice.[120] Anything less is rather difficult to allege as a legitimate reason for enforcing the termination of an already expired lease. A landlord may technically make out good cause where he wishes to use the premises not for living or for working, but for "public, cultural, [or] religious purposes," but only when he also offers the existing tenant an alternate accommodation.[121]

---

[113] *Id.*

[114] *Id.* at 13.

[115] *Id.*

[116] *Id.* This rule applies where the landlord and tenant freely negotiate the lease. The minimum duration is shortened to three years where the parties allow landlord and tenant associations to supply a ceiling for the rent. *Id.*

[117] *Id.*

[118] BRECCIA & BARGELLI, *supra* note 79, at 14.

[119] *Id.* at 13.

[120] *Id.* at 14. The landlord is allowed to terminate a tenancy on this ground only after serving six months' notice (after completion of a four year tenancy). *Id.*

[121] *Id.*

In the absence of proof of a legitimate ground, the Italian lease renews for another four years.[122] At the end of the reconducted lease term, again, the landlord may terminate only upon giving a six-month notice to his tenant, but this time, no legitimate ground for termination is needed along with the notice.[123] The mere expiration of the lease term is sufficient ground for recognizing the end of the parties' relationship.

In effect, then, absent "good cause," an Italian landlord is stuck with a lease lasting at least eight years! And even worse, after this eight years expires, he may still find himself unable to retake possession of his property. Just as striking as the good cause provisions of the 1998 statute is the fact that it carries forward, albeit in modified form, the notion behind the eviction suspension orders of the 1978 Italian regime.[124] Although eviction suspension is not generally provided for as it was in 1978, the 1998 statute retains it "if the house is situated in a highly populated municipal district."[125] In such areas, a valid eviction order is typically suspended for six months. And where the tenant is "unemployed," sixty-five years old, or has at least five children, the suspension stretches to eighteen months.[126] Thus, a landlord that entered into a simple four-year lease—the very shortest duration Italian law would allow him to perfect—may find himself stuck with a lease of nearly ten years with no way out.

Unfortunately, Italy is not alone in overprotecting tenants. In Germany, perhaps the biggest tenant protection comes from the fact that lease contracts limited in time are generally not allowed. The German Civil Code provides that such a "fixed term contract can only be concluded if the landlord has a reason for such a limitation."[127] Legitimate reasons for perfecting a term contract would include the landlord's desire to live in the premises himself, or a planned renovation that would not be possible or would be overly burdensome if a tenant were living on the premises.[128] The landlord must inform his

---

[122] *Id.* at 15.

[123] *Id.*

[124] BRECCIA & BARGELLI, *supra* note 79, at 15.

[125] *Id.*

[126] *Id.*

[127] *See* WOLFGANG WURMNEST, EUROPEAN PRIVATE LAW FORUM AT THE EUROPEAN UNIVERSITY INSTITUTE, THE EUROPEANISATION OF PRIVATE LAW—GERMANY 37, *available at* http://www.iue.it/law/ResearchTeaching/EuropeanPrivateLaw/Projects/TenancyLawGermany.pdf; *see also* Bürgerliches Gesetzbuch [BGB] [Civil Code] Aug. 18, 1896, Bundesgesetzblatt, Teil I [BGBl. I], as amended, § 575.

[128] *See* BGB § 575, ¶ 1; *see also* WURMNEST, *supra* note 127, at 37–38.

tenant of his rationale for seeking a term contract in writing.[129] As a result of these rather stringent rules, as one might imagine, most leases in Germany are deemed to be contracts of unlimited time.[130] This extended tenure certainly provides German tenants with a large measure of protection not present in leases perfected in the United States.

And the German tenant protections do not stop there. Their rules governing termination of leases by notice are also substantially protective of tenants. Specifically, German notice provisions are quite lopsided. A tenant may end an indefinite duration lease at any time merely by giving a three-month notice.[131] No justification is necessary. The landlord, on the other hand, "has relatively few possibilities to terminate the [lease] contract."[132] He may terminate the lease by giving notice only where he has a "legitimate interest" in the contract's termination.[133] And, of course, the German Civil Code defines this "legitimate interest" quite narrowly. The sole circumstances sufficient to warrant termination of the ongoing tenancy relationship are: (1) tenant breach of a contractual duty; (2) landlord need for the leased premises;[134] or (3) a lease contract that "prevents the landlord from making an economically justifiable use of the premises."[135]

The restrictive grounds for landlord notice already narrow the factual scenarios that will give rise to a valid termination by landlord notice quite substantially. But German law then deals another blow to landlords who can meet this stringent burden by allowing the tenant to contest the termination and demand continuation of the lease if termination "would give rise to hardship for the tenant or his family that would be unjustified even in the light of the legitimate interests of the landlord."[136] Moreover, even if the interests of the landlord outweigh those of the tenant and the eviction is deemed lawful and

---

129 WURMNEST, *supra* note 127, at 38.

130 *See id.*

131 *See id.*; *see also* BGB § 573c, ¶ 1.

132 WURMNEST, *supra* note 127, at 34.

133 *Id.*

134 This requirement can be satisfied by a personal need on the part of the landlord, or a need of one of his family members, though German courts have been reluctant to find the notice proper for need of a brother-in-law or sister-in-law. *Id.* at 35–36.

135 *See id.* at 34; *see also* BGB § 573, ¶ 2.

136 WURMNEST, *supra* note 127, at 34. Some German leases are exempt from these harsh requirements. The rules set out here do not apply, for instance, where the landlord is living in the premises himself. *Id.*

appropriate, a court may delay it upon the tenant's request for up to one year "to avoid hardship."[137]

And if the Italian and German examples are not telling enough, the modern French tenancy law is perhaps the most overt European example of an emphasis on the rights of the tenant at the expense of landlords. The bulk of the current French landlord-tenant law was enacted in 1981 by a socialist regime that believed the thrust of tenancy law should be to "protect the weak party against the stronger, *i.e.*[,] the tenant against the landlord. Tenants were considered to be abused by unscrupulous landlords taking advantage . . . [of their lack of] legal protection."[138] Several revisions have modified the French tenancy regime since 1981, but its salient features remain. Tenants are exceptionally well-protected. As with most European landlords, French landlords may terminate lease contracts only for "legitimate and serious reason."[139]

Perhaps the most tenant-friendly aspect of French law is its treatment of eviction enforcement. In all cases, French judges have absolute discretion to grant tenants *délais de grâce* of up to three years. The court must find that "seriously unfair consequences could result from the eviction" to grant such a delay.[140] But presumably something less than abject homelessness will do. Waiting for the end of the school year for the children or completing an employment project, for example, may provide sufficient grounds for postponement of an eviction order.[141] Even more tenant-friendly, however, is the French rule that no landlord may evict a tenant during the winter.

---

[137] *Id.* at 36.

[138] NATALIE BOCCADORO & ANTHONY CHAMBOREDON, EUROPEAN PRIVATE LAW FORUM AT THE EUROPEAN UNIVERSITY INSTITUTE, THE EUROPEANISATION OF PRIVATE LAW—FRANCE 2 (2004), *available at* http://www.iue.it/LAW/ResearchTeaching/EuropeanPrivateLaw/Projects/TenancyLawFrance.pdf.

[139] Such reasons include, inter alia, the desire to sell the leased property and the desire to live on the premises or to allow a family member to do so. Law No. 89-462 of July 6, 1994, Journal Officiel de la République Française [J.O.] [Official Gazette of France], July 8, 1989, p. 8543, art. 15, *available at* http://www.legifrance.gouv.fr (follow "Les autres textes législatifs et réglementaires" hyperlink); *see also* BOCCADORO & CHAMBOREDON, *supra* note 138, at 2. This requirement is less protective of tenant rights in France than it is in other countries discussed herein, however. This is true because the indefinite duration lease is prohibited under French law. Thus, when we speak of a landlord "giving notice," that notice is one that will end a fixed term lease. Nevertheless, lease terms are protective of French tenants, since they may be perfected for a minimum of three years (or six years if the landlord is a legal entity rather than an individual). *Id.*

[140] BOCCADORO & CHAMBOREDON, *supra* note 138, at 18.

[141] *Id.*

The effect of this delay of grace is to suspend evictions for more than one third of every year—namely, from November 1 to March 15.[142]

In short, European tenancy regimes can be characterized as almost shockingly protective of tenants—at the expense, of course, of their landlords. Good cause eviction schemes alone offer tenants a wealth of protection. And when the grounds for good cause are interpreted narrowly, or the good cause scheme is bolstered with eviction suspension orders for "weak" occupants, landlords suffer significant disadvantages.

## III. THE DELETERIOUS ECONOMIC EFFECTS OF A GOOD CAUSE SCHEME

Even setting aside the fact that rules requiring good cause for tenant eviction or lease nonrenewal may represent a theoretically unjustifiable balancing of the interests of equally innocent and needy private parties, such rules should be rejected because they are detrimental from an economic standpoint. The majority of jurisdictions that have adopted a good cause eviction standard have done so to solve particular economic crises. Yet both basic economic theory and empirical evidence demonstrate that good cause eviction rules have nearly the opposite economic effect of that intended.

### A. *Exacerbating the Problem of Dwindling Supply*

Stringent restrictions upon the right of landlords to evict tenants are typically enacted in times of housing shortage. The idea is a rather simple one. If a great deal of affordable rental housing is not available, government feels pressure to act to protect tenants and to ensure that they are able to retain the housing they have for as long as possible.[143] The easiest way for the law to promote tenant protection is to impose a requirement upon landlords to refrain from evict-

---

[142] *Id.* The suspension begins from October 15 in Paris. Law No. 90-449 of May 31, 1990 [J.O.] [Official Gazette of France], June 2, 1990, p. 6551, art. 21, *available at* http://www.legifrance.gouv.fr (follow "Les autres textes législatifs et réglementaires" hyperlink). The Polish landlord-tenant regime provides a similar winter suspension from November 1 to March 31 "for humanitarian reasons." EWA GROMNICKA & PRZEMYSLAW ZYSK, EUROPEAN PRIVATE LAW FORUM AT THE EUROPEAN UNIVERSITY INSTITUTE, THE EUROPEANISATION OF PRIVATE LAW—POLAND 33 (2004), *available at* http://www.iue.it/LAW/ResearchTeaching/EuropeanPrivateLaw/Projects/TenancyLawPoland.pdf.

[143] Robert G. Lee, *Rent Control—The Economic Impact of Social Legislation*, 12 OXFORD J. LEGAL STUD. 543, 544 (1992). The goal of rent control, at least, is "to choke off speculation (or price inflation) in times of economic crisis, when strong demand faces a limited supply." SHLOMO ANGEL, HOUSING POLICY MATTERS: A GLOBAL ANALYSIS 120 (2000).

ing their tenants absent good cause, often layered with controls on the rent imposed.[144]

One failing of this strategy is that it can never achieve a long term solution to the problem it seeks to remedy. Both requirements of good cause eviction alone and the rent controls that typically accompany them actually serve to discourage new investment in rental property, and thus hold stagnant the existing level of rental housing supply. Potential investors are highly unlikely to purchase rental properties knowing that they will be subject to an especially stringent eviction standard.[145] First, the effective loss of the ability to dispose of the property substantially disincentivizes housing market investment.[146] What prospective landlord would pursue rental investments in the face of the utterly abysmal fates that befell the landlords in the *Velosa Barreto*[147] and *Spadea*[148] cases? The landlords' inability to make any use of the properties in those cases or even to sell the property for anything approaching a reasonable rate of return certainly offends notions of the rights that should be afforded to the owners of private property.[149] It is not surprising, perhaps, that the sale of

---

[144] Rent controls are almost always a part of a good cause eviction scheme because, in the absence of a controlled rent, a landlord desiring to end a lease without good cause would escape the lease merely by raising the rent until it reached a level impossible for the tenant to meet. No "eviction" would occur, and the landlord would therefore avoid liability. Lawrence Berger, *The New Residential Tenancy Law—Are Landlords Public Utilities?*, 60 NEB. L. REV. 707, 727–28 (1981).

Literally hundreds of volumes have been published both defending and attacking rent control. It seems that both legal scholars and economists are split as to whether it provides any real economic benefits. This paper focuses on good cause eviction, not rent control, while recognizing that rent control may play a significant role in an overall scheme of good cause eviction. For an influential and thorough debate of the multitude of issues raised by rent control schemes, see generally Richard A. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741 (1988) and the eight responses printed in that same volume, *id.* at 1215–80. The effect of rent control from a purely theoretical economic perspective is nicely explored in Steven N.S. Cheung, *A Theory of Price Control*, 17 J.L. & ECON. 53 (1974).

[145] *See* Berger, *supra* note 144, at 730.

[146] While, in theory, a landlord with a tenant subject to eviction only for good cause may always just sell his property, reality demonstrates otherwise. The hit the landlord takes on market value is typically significant enough to make disposal, at least practically speaking, an unacceptable option. Lee, *supra* note 143, at 551–52.

[147] Velosa Barreto v. Portugal, App. No. 18072/91, 1995 Y.B. Eur. Conv. on H.R. 355 (Eur. Ct. H.R.).

[148] Spadea v. Italy, App. No. 12868/87, 21 Eur. H.R. Rep. 482 (1996).

[149] In civil law systems, property owners are afforded the right to use the items they own, or to derive the fruits of them. But perhaps the most important feature of true ownership is the right of the owner to dispose of that which he owns in any manner he sees fit. 1 MARCEL PLANIOL, TRAITÉ ÉLÉMENTARIE DE DROIT CIVIL [TREATISE ON THE CIVIL LAW] pt. 2, No. 2332, at 380 (Louisiana State Law Inst. trans. 1959) (1939) ("That which characterizes the right of ownership . . . is the power of dispos-

rental units with "sitting tenants" that may only be evicted for good cause typically brings thirty to forty percent less than their vacant counterparts.[150] The financial effect of a landlord's assumption of a rental subject to the good cause eviction requirement—particularly in a case like *Scollo*, where no rent was paid for more than seven years[151]—is astoundingly discouraging.[152] Of course, these consequences also stymie other would-be investors.[153]

Even beyond the significant and direct financial disincentive imposed by a good cause eviction requirement, there is a more subtle and emotional disincentive. The mere "fear of being unable to evict a disliked tenant," even after the initial term of the landlord-tenant relationship has expired, has been referred to as a "potential loss of psychic income."[154] This emotional consideration has been shown to be nearly as significant to landlords as financial ones.[155] British landlords, for instance, typically express a greater dissatisfaction with security of tenure provisions than they do with their rent control counterparts.[156]

---

ing of the thing, by consuming it, by physically destroying it and by transforming its substance.").

[150] Immobiliare Saffi v. Italy, App. No. 22774/93, 30 Eur. H.R. Rep. 756, 778 (1999).

[151] Scollo v. Italy, App. No. 19133/91, 22 Eur. H.R. Rep. 514 (1996) (Eur. Ct. H.R.).

[152] The *Scollo* facts are not confined to Italy. They could easily be duplicated in the United States. Extreme tenant protection has resulted in making eviction extremely difficult for landlords, even where their tenants have stopped paying rent. PETER D. SALINS, THE ECOLOGY OF HOUSING DESTRUCTION 73 (1980). In this way, the rules of tenancy depart from almost every other contractual relationship known to the law. In other sale and lease transactions, payment of the price is a necessary component of the relationship between the parties. The merchandise provided must also be of a certain quality. But if it falls short, the remedy is "an annulment of the transaction." *Id.* at 74. Buyer receives a return of the price and seller gets the good back. "Under almost no circumstances is the remedy for an unsatisfied purchaser/lessee the continued enjoyment of the 'flawed' good or service for free." *Id.*

[153] *But see* Kenneth K. Baar, *Would the Abolition of Rent Controls Restore a Free Market?*, 54 BROOK. L. REV. 1231, 1232–33 (1989) (suggesting that the empirical evidence on the effect of rent control on supply is varied). A few studies have found "no correlation between rent controls and the volume of apartment construction." *Id.* at 1233.

[154] Lee, *supra* note 143, at 551.

[155] *See* JOHN ALLEN & LINDA MCDOWELL, LANDLORDS AND PROPERTY 43 (1989). Evidence submitted to Britain's Environment Committee indicated that small landlords (of which there were over 500,000) considered security of tenure legislation to be a "major influence" upon their decision to rent residential property. *Id.*

[156] Likewise, studies demonstrate that security of tenure "is the single most important determinant of housing demand for all households, overshadowing the importance of both the quality of structures and the amount of living space." *See* ANGEL, *supra* note 143, at 315; *see generally* Axel Börsch-Supan, *Econometric Analysis of Discrete*

Second, the illiquidity of a rental home burdened by good cause eviction requirements dissuades investors. Real estate investors are more likely interested in a long-term, stable investment than are investors in, for instance, the stock market.[157] But even real estate investors typically desire a somewhat fleeting arrangement. The illiquidity resulting from good cause eviction rules and the "problem of gaining access to the capital [invested] at the most opportune time may be sufficient to dissuade" even the most committed investor.[158] The ongoing, near perpetual nature of a lease subject to a good cause eviction rule deprives the landlord of the ability to sell at a "vacant possession price,"[159] effectively controlling his ability to exit as owner. Limiting the potential investor's exit opportunities in such an extreme way is not only theoretically objectionable, but is practically unworkable.[160] When investment in an uncontrolled (or, at least, more reasonably controlled) private market (including the stock market, for instance) is easily and readily available, there simply is not sufficient incentive for investors to turn to the housing market. A focus on other investments makes more sense.

Good cause eviction requirements, then, certainly discourage investment in the market for rental housing, either through the purchase of existing dwellings devoted to rental or through the construction of new rental dwellings. But the rules may do even greater damage by depleting the existing rental housing stock. In light of the negative financial and emotional constraints outlined above, landlords newly faced with good cause eviction requirements tend to opt for conversion of their rental dwellings at the earliest possible opportunity.[161] They will convert their rental properties to alternative,

---

*Choice with Applications on the Demand for Housing in the U.S. and West Germany*, 296 LECTURE NOTES IN ECONOMICS AND MATHEMATICAL SYSTEMS 118 (1987).

[157] A 1995 survey of private property owners and managers revealed that their primary reason for acquiring rental property was to earn rental income (for small property owners) and long-term capital gains (for medium and large-scale property owners). HOWARD SAVAGE, U.S. CENSUS BUREAU, WHAT WE HAVE LEARNED ABOUT PROPERTIES, OWNERS, AND TENANTS FROM THE 1995 PROPERTY OWNERS AND MANAGERS SURVEY 1 (1998), http://www.census.gov/prod/3/98pubs/h121-9801.pdf.

[158] *See* Lee, *supra* note 143, at 552; *see also* HAROLD L. WOLMAN, HOUSING AND HOUSING POLICY IN THE U.S. AND U.K. 63 (1975).

[159] KARN & WOLMAN, *supra* note 3, at 144.

[160] *See* Hanoch Dagan & Michael A. Heller, *The Liberal Commons*, 110 YALE L.J. 549, 567–70 (2001) (property regimes that make "exit impractical . . . or that unreasonably delay exit [are] incompatible with the most fundamental liberal tenets").

[161] *See* Epstein, *supra* note 144, at 763–64. Of course, since a tenant typically may not be evicted because of the landlord's conversion desires, the landlord must often wait for the existing tenant to voluntarily vacate the premises. *See* WOLMAN, *supra*

higher-value uses in order to reap larger returns on their often significant financial investments. This may involve converting the property into a dwelling for their own use, or perhaps converting it into condominium living.[162] Good cause eviction requirements create incentives for such conversions by diminishing the value of investments in rental housing and thereby decreasing existing rental stock. The regulation, therefore, causes the very depletion of housing that it attempts to remedy.[163]

The United Kingdom's experience with good cause eviction and rent control nicely illustrates investor reaction to the disposal and illiquidity effects of those legal rules.[164] Long periods of good cause eviction accompanied by rent control there have "progressively paralyzed the supply of houses for rent and perpetuated shortage."[165] The percentage of British households accommodated by the rental housing market plummeted from ninety percent to less than seven per-

---

note 158, at 63 (landlord desiring to convert must either "bribe" existing tenants to move or wait for them to leave voluntarily).

[162] *See* Epstein, *supra* note 144, at 765; *see also* Louis M. Rea & Dipak K. Gupta, *The Rent Control Controversy: A Consideration of The California Experience*, 4 GLENDALE L. REV. 105, 134 (1981). Many cities have enacted ordinances curtailing the rights of property owners to convert property to condominiums. For example, Pleasanton, California, passed a 2006 ordinance requiring any person seeking to convert rental property into condominiums to grant a right of first refusal to low income tenants. PLEASANTON, CAL., CODE § 17.04.100 (2007), *available at* http://qcode.us/codes/pleasanton. The law further provides that very low income tenants have the right to continue their existing leases for *nine years* from the date of notice of intended conversion. *Id.* These rules were established to "minimize or avoid the hardship caused by the displacement of tenants." *Id.* § 17.04.030. San Francisco regulates condominium conversion through a lottery system under which only 200 units per year are allowed to be converted. SAN FRANCISCO, CAL., SUBDIVISION CODE § 1396.1 (2007). In addition to providing such a small number of conversions, the Code provides that landlords must provide for temporary tenant relocation and must *bear the cost of moving expenses* for any tenant. *Id.* §§ 1392–1393. Applications to the conversion lottery are prohibited if a landlord has had two or more evictions after May 2005 or even one eviction, if it involved a senior citizen, disabled person, or catastrophically ill tenant. *Id.* § 1396.2.

[163] *See, e.g.*, Thomas S. Nesslein, *Market versus Planning: An Assessment of the Swedish Housing Model in the Post-war Period*, 40 URB. STUDIES 1259, 1269 (2003).

[164] The British first adopted good cause eviction rules (along with rent control) in the early twentieth century as a measure to remedy housing shortages caused by World War I. And although their tenancy rules have changed rather dramatically since, good cause eviction remains as a key feature of the United Kingdom's tenancy regime. THE LAW COMMISSION, CONSULTATION PAPER NO. 162, RENTING HOMES 1: STATUS AND SECURITY 23, 51–52 (2002), *available at* http://www.lawcom.gov.uk/docs/cp162.pdf [hereinafter RENTING HOMES]; *see generally* DAVID HUGHES ET AL., TEXT AND MATERIALS ON HOUSING LAW 118–56 (2005).

[165] STAFFORD, *supra* note 18, at 114.

cent after the adoption of a good cause eviction scheme.[166] The purported solutions to the severe housing shortage in the United Kingdom have only encouraged landlords to keep their flats empty[167] or to make altogether different investments. In the wake of its good cause eviction rules, England has seen significant occurrence of empty property, a record number of homeless, and slow-rising capital returns.[168] All of these effects can be attributed to a widening of the supply-demand gap that should have been anticipated. Restricting a landlord's right to such an extreme degree will necessarily disincentivize him from supplying his social good, exacerbating the problem of an already low supply. Good cause eviction as a solution for remedying low supply fails because it "contravene[es basic] micro-economic rules of supply and demand."[169]

If a state is going to reduce private profit and thereby diminish speculative activity in the rental market, its only hope of not realizing a perpetuation of the low supply problem would come with increased state production of housing.[170] The market effect of disincentivizing individual investment activity creates a need for the state to play a substantial role in the production of new housing.[171] Historically, governments have shied away from performing such functions—either because of the significant resources required to competitively supply adequate housing or because of concern that, for political reasons, such activities are best left to the free market.[172] And where government has attempted to remedy low supply through its own in-

---

[166] Ray Forrest & Alan Murie, *Restructuring the Welfare State: Privatization of Public Housing in Britain, in* HOUSING NEEDS & POLICY APPROACHES: TRENDS IN THIRTEEN COUNTRIES 97–109 (Willem van Vilet et al. eds., 1985).

[167] WOLMAN, *supra* note 158, at 63.

[168] STAFFORD, *supra* note 18, at 114.

[169] Salins, *supra* note 12, at 775.

[170] *See generally* LEONARD SILK, SWEDEN PLANS FOR BETTER HOUSING 74–83 (1948). The French government, for example, to make good on its promise to provide adequate housing to all its citizens, plans to produce over 120,000 housing units per year for the next five years. *See French PM Vows, supra* note 6.

[171] The risk extends beyond the tenants subject to good cause eviction. *See generally* Michael Schill, *Comment on Chester Hartman and David Robinson's "Evictions: The Hidden Housing Problem,"* 14 HOUSING POL'Y DEBATE 503, 506 (2003). Schill argues that tenancy restrictions like rent control can also have a negative impact on non-rent controlled tenants of the landlord. According to Schill, a landlord who can make up for decreased rent from one tenant by increasing that collected from another likely will. And where this is not possible, he is likely to cut back maintenance of all his holdings, and possibly even abandon the property. *Id.*

[172] ADAM SMITH, THE WEALTH OF NATIONS 540 (R.H. Campbell ed., Oxford Univ. Press 1979) (1776) (describing the struggle between free market capitalism and government regulation).

volvement in housing production, the results have been disappointing at best.

Sweden provides the clearest illustration of a failed government control model.[173] To rectify shortages in the wake of World War II, Sweden opted for government regulation of all features of housing production, including the type and cost of housing construction.[174] The idea was that housing shortages were caused, at least in part, by excessive construction costs and that government control could solve that problem and thereby reduce costs to tenants.[175] To effectuate this shift, the Swedish government controlled rents, imposed a good cause eviction scheme, and controlled production with subsidized financing.[176] Unfortunately, however, pushing housing construction out of the capitalistic market and essentially creating a "socialist housing market"[177] has caused building costs to skyrocket to untenable rates.[178] Rising costs are not the only failure of the system. Socioeconomic segregation in Sweden is worse than ever.[179] The Swedish government assumed that simultaneous controls of rent and production

---

[173] *See* Nesslein, *supra* note 163, at 1269; *see generally* Deborah Kenn, *One Nation's Dream, Another's Reality: Housing Justice in Sweden*, 22 BROOK. J. INT'L L. 63 (1996) (describing Sweden's good cause eviction regime).

[174] Kenn, *supra* note 173, at 80–81.

[175] *Id.*; *see also* Nesslein, *supra* note 163, at 1270.

[176] Nesslein, *supra* note 163, at 1262.

[177] Kenn, *supra* note 173, at 80.

[178] Nesslein, *supra* note 163, at 1270. By 1985, Swedish housing costs were reported to be forty-three percent above the average of those of other European countries and thirty-five percent above those of the United States. *Id.* By 1990, those building costs had increased to twice as high as those in the United States. *Id.* As of the mid-1990s, Swedish housing costs were still twice as high as those in this country, even after adjusting building costs for the economies of scale associated with larger housing square footage in the United States. *Id.* at 1271. This disparity is thought to be caused, in part, both by the lack of competition in the construction industry and by the development of "special economic-interest groups," including construction and building materials firms, housing bureaucracy groups, municipal housing companies, and national housing cooperatives. *Id.* These groups have an economic incentive to "subsidi[ze] away" rising building costs in order to support" otherwise non-economically viable new construction. *Id.* In contrast, the American, largely free-market housing system has generated construction costs considered to be the lowest among high-income countries. *Id.* at 1265. Housing costs per square meter, as of 1990, according to the Global Housing Indicators Program were: (1) Japan–$2604; (2) Finland–$1734; (3) Sweden–$1527; (4) Norway–$1426; (5) Germany–$1305; and (6) the United States–$500. *Id.*

[179] *Id.* at 1274. In 1997, a Swedish government investigation revealed that in the country's three largest cities—Stockholm, Gothenburg, and Malmo—class segregation was more pronounced than it had been at any time during the pre-War period. *Id.* In those areas, unemployment often exceeds fifty percent. *Id.* The study noted that residential segregation had begun to overlap with social and ethnic segregation. *Id.*

would provide housing opportunities to all income groups and eliminate segregation by ethnicity and socioeconomic status, but quite the opposite has resulted.[180] All in all, most housing experts and economists agree that the Swedish model has not worked and should not be emulated.[181]

The result of good cause eviction rules is somewhat of a Catch-22: The rules necessarily perpetuate, if not overtly cause, housing shortages.[182] But if the government steps in to remedy that shortage by controlling the construction market, the high costs that result cause the housing market to further suffer.[183] The only real solution is to avoid the Catch-22 by rejecting good cause eviction requirements altogether. The free market for rental housing certainly has its flaws, but none so great as those resulting from good cause eviction schemes that seek to remedy them.[184]

### *B. Decreasing the Quality of Existing Rental Housing*

Even beyond the serious supply problem that rules requiring good cause for tenant eviction create, there is a more fundamental problem with the theory. The trend in the post-World War era is to impose good cause eviction as a sort of measure to guarantee the right of quality, affordable housing to all mankind.[185] But the effect

---

[180] *Id.* at 1273–74.

[181] *Id.* at 1277 ("The general lesson is that both theory and much real-world evidence strongly suggest that the Swedish model is not a model that should be emulated in the search for equitable and efficient housing outcomes."). *But see* Kenn, *supra* note 173, at 63 (lauding the Swedish system as an "available prototype" for the United States).

[182] At least one author has found rent control, which almost necessarily includes a good cause eviction rule, to be the most significant predictor of homelessness. *See* William Tucker, *Where do the Homeless Come From?*, NAT'L REV., Sept. 25, 1987, at 41.

[183] Shlomo Angel, in his excellent work on global housing policy, has characterized the debate as one between enabling and nonenabling government intervention and has aptly noted that "[n]either laissez faire nor the centrally planned economy have survived the test of time." ANGEL, *supra* note 143, at 13.

[184] *See generally* Lenore Schloming & Skip Schloming, *Comment on Chester Hartman and David Robinson's "Evictions: The Hidden Housing Problem,"* 14 HOUSING POL'Y DEBATE 529 (2003). According to the Schlomings, who are President and Executive Director of the Small Property Owners Association, rental housing is an exceptionally *un*-monopolistic market. *Id.* at 536. Using 1990 Census data, the authors estimate that seventy-five percent of rental housing is owned, not by large investors, but by small-scale landlords. *Id.* "No business sector in the country has as many owners, with holdings inversely small. . . . The natural searching and matching of owners to tenants in such a highly diversified market is freedom itself, with the desire to find good owners/good tenants constraining both sides to behave themselves." *Id.*

[185] *See* BELG. CONST. art. 23 (describing constitutional and legislative "rights to housing" in several nations).

of imposing good cause eviction requirements, ironically, is to actually decrease the quality of rental housing.

Good cause eviction requirements insure stability for tenants and, particularly if they are accompanied by rent control, tend to push tenants toward maintaining their status quo as renters rather than purchasing their own homes. Well-respected sociological research demonstrates that people simply do not care for items they are using in the same manner as items they own.[186] The incentives good cause eviction requirements create for tenants, therefore, serve to lessen the continuing quality of the premises they occupy.

Further, the necessarily lengthy term of leases with good cause eviction requirements increases the dilapidation of rental housing by increasing costs and narrowing the landlord's rate of return.[187] Faced with a significantly less profitable investment, a landlord is likely to make only those repairs absolutely required, to do so in the cheapest manner possible, and to do so only when forced.[188] Continued maintenance of rental property simply becomes increasingly unprofitable under a good cause eviction scheme.[189] Likewise, the landlord is

---

[186] Even in long term rental situations, property owners are the only parties with a stake in maintaining the value of their property, and thus they are the parties most likely to take steps to preserve that value. *See, e.g.*, ANGEL, *supra* note 143, at 85.

[187] In Sweden, for instance, researchers have found that rental housing consists primarily of highly dense spaces, "monotonous in design and with little attractive landscaping," that because of lack of maintenance and "problem tenants" has fallen into serious disrepair. Nesslein, *supra* note 163, at 1266.

[188] *See, e.g.*, Cheung, *supra* note 144, at 61; Schloming & Schloming, *supra* note 184, at 533 (describing small property owners, the paradigmatic low-cost housing owner, as blue collar individuals, "typically just one to two steps above their tenants on the income scale," who often self-maintain and "delay costly capital improvements as long as possible[, nursing] a leaky roof and old plumbing along to squeeze out a few more years of life before spending big bucks").

[189] George Sternlieb described well the reality of the landlord's dwindling returns to the United States House of Representatives in 1971:

> One of the most satisfying figments of folklore in our times is the portrait of the slum landlord. A typical vision is that of the central city slums being the fiefdom of a small group of large investors. The latter in turn grow very fat indeed on the high rents and low input which their tenants and buildings are subjected to.
>
> I have called it a satisfying illusion because it has in turn permitted us the belief that all that is required in low-income housing was a repartitioning of an already adequate rent pie. Whether through code enforcement, rent controls, or any of a host of other mechanisms, the problem of good maintenance could be resolved by squeezing some of the excess profits out of landlords' hands. This process would still leave enough of a residue to maintain his self-interests in the longevity and satisfactory quality of the structure in question.
>
> This bit of folklore may have had considerable validity a decade or two ago. It has little relationship to the realities currently.

highly unlikely to take any steps to improve the premises (beyond merely "repairing" that which is broken) under such a scheme.[190] The illiquidity of the rental housing as an asset and the very length of time inherent in the investment would prevent or, at the very least, substantially diminish, the landlord's ability to ever realize the gains of improving the housing.[191] And so, once again, good cause eviction requirements, by disincentivizing landlords from repairing and improving the land they own, tend to diminish the overall stock of quality rental housing.[192]

### C. *Encouraging Inefficient Housing Allocation*

It is well-established that rent control encourages inefficient allocation of housing. Specifically, it encourages tenants to overconsume space and stay in places they neither need nor would be able to afford absent regulation of the rent.[193] Good cause eviction requirements also necessarily entail this problem. In fact, a tenancy scheme adopting good cause eviction compounds it; essentially, the risk under such a regime is magnified, as it exists both at the high and low ends of the scale.

Lease contracts with a good cause eviction requirement are typically required to have a somewhat lengthy term.[194] Indeed, the good cause component would not offer the tenant the protection for which the scheme is designed if the parties were permitted to perfect a lease contract for an exceptionally short term. The combination, then, of the tenant security that comes with a good cause eviction requirement, the lengthy term of the lease, and the likelihood that rent control exists will, at the very least, encourage tenants to stay in the prem-

---

*Abandonment and Rehabilitation: What is to be Done?, Papers Submitted to the Committee on Banking and Currency*, 92d Cong. 315, 316–317 (1971) (statement of George Sternlieb). *See* WOLMAN, *supra* note 158, at 66; *see also* KARN & WOLMAN, *supra* note 3, at 144 (British landlords attempted to rectify the negative effects of rent control through undermaintenance).

[190] SALINS, *supra* note 152, at 92–93.

[191] Lee, *supra* note 143, at 551–52.

[192] *See, e.g.*, David Kiefer, *Housing Deterioration, Housing Codes, and Rent Control*, 17 URB. STUDIES 53, 54 (1980); *see also* Salins, *supra* note 12, at 777 n.10.

[193] Nesslein, *supra* note 163, at 1268; Lee, *supra* note 143, at 546; *see also* Epstein, *supra* note 144, at 762 (noting that a wealth test, which relies on ability to pay, better matches persons with available premises, "with a minimum of fuss, bother, and political intrigue").

[194] Italian residential lease contracts may not be established for less than four years. French tenants have the right to a three-year minimum lease. Fixed duration lease contracts are generally not allowed at all in Germany. *See supra* notes 86, 130, and 139 and accompanying text.

ises longer than they otherwise might. As the tenant's family structure changes—either expanding or contracting—the tenant remains stagnant. For the sector of society subject to a controlled tenancy regime, "inefficient distribution of housing consumption" results.[195] While rent control encourages tenants to over-consume, keeping a larger apartment than necessary because of artificially low rent, a good cause eviction requirement encourages both over- and under-consumption to avoid leaving the security of an existing tenancy for the highly uncertain prospect of more suitable housing.

Moreover, the ridiculously high transaction costs and lengthy wait that typically befall those renters seeking increased space stands as a "substantial impediment to a household's ability to raise [its] housing standard."[196] The Swedish rental housing market, for instance, is plagued by significant difficulties in tenant mobility. Government control over housing production without sufficient market-based information has resulted in a significant concentration of "average-sized rental dwellings."[197] Ninety percent of the rental units in Sweden have only three bedrooms.[198] Upgrading to a dwelling with the needed space proves impossible, or exceptionally onerous, for many families.

The effect of a non-market-driven and inefficient allocation of rental housing is somewhat staggering. Substantial waste is created under such a scheme, because new and appropriately-sized housing must be constructed for families not able to find adequate vacant housing. A 1990 study of the Swedish rental housing market

> estimated that if a small proportion of elderly Swedish households relinquished their dwellings to larger families, the volume of construction could be reduced substantially. Over a twenty-year period, it was estimated that it would be possible to reduce new construction by . . . roughly eighteen percent of total housing production . . . .[199]

In an increasingly populated world,[200] such results should be pursued. Achieving efficiency in housing allocation will serve to ensure that the

---

[195] Nesslein, *supra* note 163, at 1268 (referring to rent regulation only).

[196] *Id.*

[197] *Id.* at 1268–69.

[198] *Id.* at 1269. When compared with the fact that more than half of Swedish owner-occupied homes have five bedrooms, this evidence is quite telling. *Id.*

[199] *Id.* at 1268.

[200] According to 1998 estimates and projections of the United Nations, the world population is growing at 1.33 percent per year, an annual net addition of about 78 million people. World population in the mid-twenty-first century is expected to be in the range of 7.3 to 10.7 billion and likely, by 2050, 8.9 billion. *World Population Nears*

goal of a housing policy that supports a good cause eviction scheme—namely, providing adequate housing for all—is met.[201]

*D. Pushing Tenancies into the Black Market*

There is one significant practical effect of good cause eviction limitations that is almost certainly unintended, and likely unanticipated, by proponents of the rules. The evidence shows that the significant disadvantages of good cause eviction schemes often cause landlords to seek more workable alternatives elsewhere. The result is a movement away from legal tenancy regimes altogether and into other, less desirable, relationships.

In some cases, potential landlords disappointed with the effect of a mandatory good cause eviction scheme have chosen to reject tenancy in favor of an unlawful, totally uncontrolled, and even untaxed, "black market" relationship. Poland, for instance, has had a problem with the proliferation of black market tenancies in the wake of the adoption of a good cause eviction regime.[202] The parties to such a relationship essentially attempt to operate outside the bounds of the law altogether, foregoing every benefit of a legal constraint upon both landlord and tenant.[203]

Even in American jurisdictions with good cause eviction schemes such black markets have emerged, though in a slightly less extreme fashion than that seen in Poland. In New York, the passage of rent control, along with good cause eviction limitations, has led to "bribery and under-the-table payments."[204] "Key money" arrangements have developed elsewhere whereby the landlord agrees to give the tenant the protection mandated under a legal tenancy regime, but requires him to pay an upfront fee for the privilege.[205] In these bribery and key money cases, the tenant may actually receive some of the

---

*Six Billion*, U.N. CHRON., November 4, 1998, *available at* http://www.un.org/Pubs/chronicle/1998/issue4/498p33.htm.

[201] Lawrence C. Becker, *Rent Control is Not a Taking*, 54 BROOK. L. REV. 1215, 1218 (1989).

[202] *See* GROMNICKA & ZYSK, *supra* note 142, at 30.

[203] *Id.*

[204] Rea & Gupta, *supra* note 162, at 132.

[205] *See* Cheung, *supra* note 143, at 63. For example, after restricting the right of landlords to set or alter rent levels, the British government felt compelled to enact the Increase of Rent and Mortgage Interest (Restrictions) Act 1920, making the demand of "key money" payments and other bribes a criminal offense. RENTING HOMES, *supra* note 164, at 23; *see also* Epstein, *supra* note 144, at 741 (relating an experience wherein he lost a "steal" of an apartment because, in his naiveté, he did not know that the building superintendent "needed to have his palm smeared").

benefits of a legal tenancy regime, but only upon being forced to pay a sum for which he is not legally obligated.

In other jurisdictions, landlords have not gone so far as to attempt to establish an extra-legal relationship, but rather have purposefully attempted to avoid the legal tenancy regime in favor of a different legal bond. In the United Kingdom, for example, a good cause eviction scheme layered over rent control has led to a prevalent practice on the part of owners to offer occupants "licenses" rather than leases.[206] These owners "hoped [the licenses] might fall outside the scope of the [tenancy] legislation, so that their properties were not subject to rent regulation and their occupiers did not have long-term security of tenure."[207] The license attempts have sometimes been successful in avoiding the salient features of the tenancy regime, and sometimes not.[208] Regardless of the outcome, however, these attempts at circumventing the appropriate legal relationship have been exceptionally expensive to the taxpayer, who is left holding the bag for judicial resources expended to enforce the good cause eviction scheme adopted by his legislators.[209]

### *E. Increasing Litigation*

The pragmatic effect of good cause eviction requirements on the judicial system is substantial and negative. Such a regime tends to increase litigation between landlords and tenants in a number of ways. For example, the good cause eviction requirement gives the landlord an incentive to exploit relatively minor tenant breaches of contract. In a free market for rental housing, landlords are likely to overlook small tenant infractions, as pursuing eviction is time-consuming, expensive, and unlikely to provide much long-term benefit.[210] Where the tenant is paying the market rate, the gains for the landlord are likely to be minimal.[211] At best, the landlord will reap minor financial, though perhaps slightly more substantial emotional, reward if he

---

[206] *See* RENTING HOMES, *supra* note 164, at 28.

[207] *Id.*

[208] *Compare* A.G. Securities v. Vaughan, [1990] 1 A.C. 417 (H.L.), *with* Street v. Mountford, [1985] A.C. 809 (H.L.).

[209] *See* Edgar Olsen, *An Econometric Analysis of Rent Control*, 80 J. POL. ECON. 1081, 1087 (1972).

[210] Epstein, *supra* note 144, at 764.

[211] *See id.*; *see also* AIMCO Properties, L.L.C. v. Dziewisz, 883 A.2d 310, 313 (N.H. 2005) ("Replacing one tenant upon the expiration of a lease with another tenant who will pay the same rent and occupy the same position as the tenant being evicted does not, in and of itself, provide the landlord of restricted property with any economic or business advantage.").

dislikes his tenant. In a heavily regulated tenancy regime, however, the situation is quite different. Faced with an exceptionally long term lease, very likely an artificially-fixed low rent, and the inability to end the relationship absent good cause, the landlord is likely to look for that good cause wherever the slightest possibility of establishing it exists.[212] The possibility of construing minor tenant infractions as "good cause" for eviction gives the landlord an escape valve where before there was none. "Removal for cause typically allows the landlord to recapture a substantial portion of the unit's value . . . by removing the unit from controls by 'rehabbing' it, or by selling it as a condominium."[213] With the parties no longer willing or able to resolve their disputes informally, courts must take on the added responsibility.[214]

Moreover, rules requiring good cause for tenant eviction necessarily expand the court's role in policing the landlord-tenant relationship to prevent the tenant harassment that is more likely to flow under a good cause eviction scheme than under a free market.[215] Where the landlord is desperate to end the lease and remedy a sinking investment, the good cause eviction scheme may leave him little hope. His inability to dispose of the property at will, particularly if he finds no tenant misconduct to rely upon, certainly encourages him to take any and all necessary steps to induce the tenant to leave voluntarily. Tenant harassment may result.[216]

The costs of enforcing a rent control regime in New York for just one year—1968—were estimated at $270 million, "a cost which was borne by the taxpayers."[217] Such increased cost and workload is a

---

[212] Epstein, *supra* note 144, at 764.

[213] *Id.* at 765.

[214] *Id.*; *see also* Schloming & Scholoming, *supra* note 184, at 532 (noting that the eviction proceeding, which was originally supposed to be a quick, summary proceeding to regain possession of one's property, "has been turned into a potentially very lengthy one by letting tenants or their lawyers file counterclaims against the owners as part of the eviction process itself," in effect prolonging litigation).

[215] *See* Lee, *supra* note 143, at 551.

[216] The most notorious example of such tenant harassment was that perpetrated by Perec Rachman, a British landlord in the 1950s. Rachman handled tenants he found unprofitable by either offering them cash to vacate, making their lives intolerable with loud music blaring at all hours of the night, or by cutting off their utilities and/or damaging their plumbing. Rachman's ill practices became so well known that inappropriate behavior by landlords has since been dubbed "Rachmanism." RENTING HOMES, *supra* note 164, at 25 n.22; *see* Dave Cowan & Alex Marsh, *There's Regulatory Crime, and then There's Landlord Crime: from 'Rachmanites' to 'Partners'*, 64 MOD. L. REV. 831, 837 (2001) (debates about Rachman's shenanigans were partly responsible for the rise of the Labour Party which enacted Britain's "emergency" housing legislation).

[217] *See* Olsen, *supra* note 209, at 1089–95; *see also* Rea & Gupta, *supra* note 162, at 132 n.81.

problem that both the legislatures and the courts of jurisdictions propounding good cause eviction tenancy schemes must be prepared to handle.

## IV. THE DISTURBING INVASION OF GOOD CAUSE EVICTION IN THE UNITED STATES

If the phenomenon of limiting tenant evictions to situations in which the landlord can demonstrate good cause were limited to the European countries, we might write the development off as a relatively benign one. Indeed, American and European laws, particularly those concerning property, are quite different and developments in one region often do not carry over elsewhere.[218] Unfortunately, however, this is not true of good cause eviction requirements. Although their acceptance in the United States does not come close to rivaling that of their European counterparts, good cause eviction requirements are increasingly creeping into the law of the American states.

The sources of and rationale for adoption of good cause eviction requirements in this country have been varied. But more and more, they are beginning to reflect what could be characterized as the European view—that tenant eviction *must* be limited to good cause to honor a social policy—the right to decent housing for all individuals. This view first permeated the public housing market. But today it has crept into even the market for private housing, and thus constrains landlords who lease with no governmental involvement.

### A. *In the Public and "Quasi-Public" Housing Sectors*

Public housing markets have long subjected the federal government landlord to stringent requirements not applicable to landlords in the private market.[219] The rationale is that public housing is a form of welfare from the federal government, one to which the recipient is entitled.[220] This entitlement gives rise to a property interest, which is protected under the Due Process Clause of the Fourteenth

---

[218] Andrea B. Carroll, *Examining a Comparative Law Myth: Two Hundred Years of Riparian Misconception*, 80 TUL. L. REV. 901, 943 (2006) (noting differences between civil and common law property schemes).

[219] Marc Jolin, *Good Cause Eviction and the Low Income Housing Tax Credit*, 67 U. CHI. L. REV. 521, 521–22 (2000).

[220] Joy v. Daniels, 479 F.2d 1236, 1242 (4th Cir. 1973); *see also* Ressler v. Pierce, 692 F.2d 1212, 1215 (9th Cir. 1982) (holding that Section 8 program tenants held constitutionally protected property rights); Jeffries v. Ga. Residential Fin. Auth., 678 F.2d 919, 925 (11th Cir. 1982).

Amendment.[221] The government may not, therefore, evict a public housing tenant at will.[222] The federal courts have held that evicting a tenant from public housing merely because his lease expired would infringe upon the "property interest" the tenant has to continue receiving his entitlement until there is cause to deprive him of it.[223] In the public housing context, then, the landlord—the federal government—has subjected *itself* to a prohibition on evictions absent good cause.

This prerequisite of good cause to evict has been extended beyond traditional public housing—that owned by the federal government—and now applies equally to "quasi-public" landlords. Where "the federal government has so far insinuated itself into a position of interdependence with the landlord that it must be recognized as a joint participant in the landlord-tenant relationship,"[224] the landlord is "quasi-public" and also constrained by the good cause eviction rules.[225] Such a situation exists, for instance, where the government partly finances the construction of private housing,[226] offers tax breaks or mortgage interest rate reductions for the construction of low-income housing,[227] or subsidizes tenant rent.[228] "Section 8" housing is the most well-known program of this type,[229] and even before its written provisions expressly restricted landlords to evictions for good

---

[221] *See Joy*, 479 F.2d at 1241; *see also* Swann v. Gastonia Hous. Auth., 675 F.2d 1342, 1346 (4th Cir. 1982) (Section 8 statutory "good cause" eviction requirements implicate the Due Process Clause of the Fourteenth Amendment).

[222] Housing and Urban Development Termination of Tenancy and Modification of Lease, 24 C.F.R. § 880.607 (2007). Section 880.607(b)(1)(iv) provides that "no termination by an owner will be valid to the extent it is based upon a lease or a provision of State law permitting termination of a tenancy *solely* because of expiration of an initial or subsequent renewal term." *Id.* (emphasis added). The good cause provisions in § 880.607 apply to the Section 8 Housing Assistance Program, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program, and Section 811 Supportive Housing for Persons with Disabilities Program. In addition to providing specific grounds for termination, the regulations provide that eviction for "other good cause" cannot occur unless the landlord has first provided prior notice of the offensive behavior to the tenant. 24 C.F.R. § 880.607(b)(2).

[223] *Joy*, 479 F.2d at 1241.

[224] Green v. Copperstone Ltd. P'ship, 346 A.2d 686, 697 (Md. Ct. Spec. App. 1975).

[225] *Joy*, 479 F.2d at 1242.

[226] *Green*, 346 A.2d at 695.

[227] *Id.*

[228] Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 535 (1983).

[229] *See* 24 C.F.R. § 880 (2007). The Section 8 program aims to provide low-income families with "decent, safe and sanitary rental housing through the use of a system of housing assistance payments" paid to public or private housing owners. *Id.* § 880.101(a).

cause, several courts of appeals held that such an interpretation was necessary in light of the property interests held by the tenant.[230] The intrusion upon the rights of the landlord is significant, but logical where the landlord has depended upon the aid of the federal government to achieve or maintain his status. In these "quasi-public" situations, it is still the federal government that can fairly be called the landlord.[231]

Courts in this country typically hold both public and quasi-public landlords to a good cause eviction standard because they view it as the only possibility for meeting a social goal. Congress articulated that "national goal" in the Housing and Urban Development Act to be "a decent home and suitable living environment for every American family."[232] The good cause eviction requirement, it was hoped, would insure "adequate, safe and sanitary quarters" and "an atmosphere of stability, security, neighborliness, and social justice."[233] This social goal, and the expectation of tenure that it is said to create, has even been held by the Fourth Circuit to rise to the level of a "cus-

---

[230] *See, e.g.*, Swann v. Gastonia Hous. Auth., 675 F.2d 1342, 1345 (4th Cir. 1982); Rushie v. Berland, 502 N.Y.S.2d 359, 361 (N.Y. Sup. Ct. 1986) (applying good cause requirement before Section 8 expressly required it); Greenwich Gardens v. Pitt, 484 N.Y.S.2d 439, 442 (N.Y. Dist. Ct. 1984) (articulating "well settled" view that Section 8 tenants are entitled to good cause protection). Since 1981, 42 U.S.C. § 1437f(d)(1)(B)(ii) has expressly provided for eviction only for good cause.

[231] *Green*, 346 A.2d at 697 (citing Appel v. Beyer, 114 Cal. Rptr. 336, 339 (Cal. App. Dep't Super. Ct. 1974)).

[232] The policy statement reads:

> The Congress affirms the national goal, as set forth in [the Congressional Declaration of National Housing Policy] of a decent home and a suitable living environment for every American family.
>
> The Congress finds that this goal has not been fully realized for many of the Nation's lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.
>
> The Congress declares that in the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; and in the carrying out of such programs there should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques.

Congressional Affirmation of National Goal of Decent Homes and Suitable Living Environment for American Families, 12 U.S.C. § 1701t (1968) (adopted as part of the Housing and Urban Development Act, Pub. L. No. 90-448, 82 Stat. 476 (1968)).

[233] McQueen v. Druker, 317 F.Supp. 1122, 1130 (D. Mass. 1970).

tom."[234] Under this view, even without an express congressional articulation of a good cause eviction requirement, for public and quasi-public landlords, the requirement would exist nonetheless.

One can persuasively quibble with the imposition of good cause eviction rules even in the public and quasi-public arenas, particularly questioning whether they are capable of furthering the goal at which they are aimed.[235] But their imposition in these domains is at least somewhat justifiable. Where the federal government acts as landlord, it should be able to subject itself to restrictive termination provisions, as it so desires. Likewise, when it operates as the *de facto* landlord (though a private person holds title), it should be able to condition its provision of assistance upon the imposition of restrictions on termination, as it so desires.

### B. *In the Private Housing Sector*

It is in the market for housing that is entirely private that the invasion of good cause eviction is most disturbing. And the move toward requiring that even private landlords with no governmental connection refrain from evicting their tenants (even after the expiration of a term lease) without some "good cause" has only gained sway in the United States over the last one hundred years.

The groundwork for the American sanctioning of good cause eviction requirements in the private market was laid in *Block v. Hirsh*,[236] a 1921 decision of the Supreme Court of the United States. In that case, Hirsh, a Washington, D.C. landlord, attempted to evict his tenant after the term of the lease had run.[237] The tenant, Block, argued that eviction was improper, since the District of Columbia Rents Act at that time prohibited a landlord from evicting a tenant, even when his lease was expired, without other good cause.[238] Hirsh countered that such a rule would "cut down" his right "to do what he will with his own and to make what contracts he pleases."[239]

The Supreme Court upheld Block's right to retain possession of the rented premises and rejected landlord Hirsh's contention that the result amounted to an unconstitutional taking.[240] The Court justified its decision by pointing out that the effect of the D.C. Rents Act

---

[234] Joy v. Daniels, 479 F.2d 1236, 1241 (4th Cir. 1973).

[235] *See supra* Part III.

[236] 256 U.S. 135 (1921).

[237] *Id.* at 153.

[238] *Id.* at 153–54.

[239] *Id.* at 157.

[240] *Id.*

was a fleeting one.[241] The statute was emergency legislation passed in the wake of World War I to combat an increasingly stressed rental housing market.[242] This emergency legislation was only to last two years,[243] further indicating that it was appropriately aimed at solving the post-War housing problems of Washington, D.C. Hirsh's interests were, therefore, set aside, and his lease to Block presumably perpetually continued, at least until Hirsh could make out some just cause for Block's eviction.

1. The Spread of Good Cause Eviction Across America

Post-*Block*, good cause eviction requirements took hold in some states and municipalities as a set of rules applicable to rental housing in general and in still more as a set of special rules applicable only to particularly "vulnerable tenants." Viewing these jurisdictions together clearly demonstrates that the good cause eviction requirements so prevalent in Europe are making no small gains in the United States as well.

a. The Market for Ordinary Dwellings[244]

Good cause eviction requirements imposed upon ordinary dwellings in this country have come in a number of forms. Some exist only as a corollary to and enforcer of a scheme of rent control. Others stand alone as default rules applicable to virtually all dwelling places.

i. Good Cause Eviction as a Corollary to Rent Control

Although good cause eviction schemes currently exist in a number of American jurisdictions,[245] perhaps the most well-known scheme

---

[241] *Id.* at 154.

[242] *Block*, 256 U.S. at 154.

[243] *Id.*

[244] The phrase "ordinary dwelling" is used here in contrast to special dwellings, such as mobile homes, discussed *supra* Part IV.B.1.b.

[245] *See, e.g.*, Arizona Mobile Home Parks Residential Landlord and Tenant Act, ARIZ. REV. STAT. § 33-1476 (LexisNexis 1975); Arizona Recreational Vehicle Long-Term Rental Space Act, ARIZ. REV. STAT. § 33-2143 (LexisNexis 2000); Connecticut Mobile Manufactured Homes, CONN. GEN. STAT. § 21-80 (1974); District of Columbia Rental Housing Evictions, D.C. CODE § 42-3505.01 (2001); Florida Mobile Home Park Lot Tenancies, FLA. STAT. ANN. § 723.061 (West 1984); Massachusetts Local Control of Rents and Evictions, MASS. GEN. LAWS ANN. ch. 40 § 1-9 (West 1970); New Hampshire Termination of Tenancy, N.H. REV. STAT. ANN. § 540:2 (1985); New Jersey Removal of Residential Tenants, N.J. STAT. ANN. § 2A:18-61.1 (West 2000); New York Rent Control Act, N.Y. UNCONSOL. LAW § 26-408 (McKinney 1985). For an example of a local ordinance adopting good cause provisions, see Just Cause for Eviction Ordinance, OAKLAND, CAL., O.M.C. § 8.22.3 (2002).

hails from New York. Good cause eviction is in place there to effectuate a scheme of rent control that New York City has had since 1943.[246] The gist of the New York law is that a tenant may not be evicted, "notwithstanding the fact that the tenant *has no lease or that his or her lease . . . has expired* or otherwise terminated" absent certain statutorily prescribed grounds or until the landlord obtains the necessary "certificate of eviction."[247] Seven grounds for which a landlord may evict are then set out, most of them geared toward tenant misconduct.[248]

The landlord's rope under this statute is tied tight. A property owner seeking to recover possession for his own use will find himself out of luck under the statutorily enumerated grounds. But the statute goes on to mandate that the city grant a certificate of eviction when it finds that "[t]he landlord seeks in good faith to recover possession of a housing accommodation because of immediate and compelling necessity for his or her own personal use and occupancy or for the use and occupancy of his or her immediate family."[249]

This "good faith" and "immediate and compelling necessity" standard was applied to reject the landlord's eviction request in *Buhagiar v. New York State Division of Housing and Community Renewal.*[250] Petitioner Buhagiar owned a five-apartment building that she purchased with the intent to occupy.[251] She sought an order to evict the tenant in a six-bedroom unit of the building so that she and her

---

[246] SALINS, *supra* note 152, at 61; *Rent Regulation After 50 Years—An Overview of New York State's Rent Regulated Housing*, TENANTNET NEWSLETTER 1993, *available at* http://www.tenant.net/Oversight/50yrRentReg/history.html (describing what was originally intended as a "temporary emergency measure" as a now "stable fixture" in New York, with "1.2 million of New York State's 3.3 million rental housing accommodations . . . subject to rent regulation").

[247] N.Y. UNCONSOL. LAW § 26-408(a) (McKinney 1985) (emphasis added); *see also* Duell v. Condon, 647 N.E.2d 96, 99 (N.Y. 1995) (even nonsignatory to lease gets protection of New York good cause eviction scheme).

[248] N.Y. UNCONSOL. LAW § 26-408(a) (McKinney 1985). The grounds for eviction are: (1) tenant violation of lease obligations; (2) tenant commission of nuisance or gross negligence; (3) illegal occupancy; (4) immoral or illegal use; (5) tenant refusal to renew upon demand; (6) unreasonable tenant refusal to allow landlord access to the rental unit for necessary repairs, improvements, or inspections; or (7) eviction under a conversion pursuant to a written eviction plan submitted to the attorney general. *Id.*

[249] *Id.* § 26-408(b)(1). Such landlord requests are policed with treble damages; if a landlord evicts a tenant alleging his own need and then fails to use the premises to fulfill that need, the evicted tenant may recover treble damages, plus attorneys' fees and costs. *Id.* § 26-408(g)(1)(e).

[250] 525 N.Y.S.2d 202 (N.Y. App. Div. 1988).

[251] *Id.* at 202.

daughter could personally occupy the space.[252] Buhagiar demonstrated that her living space at the time she sought eviction was smaller than the space at issue (albeit by just one room), that she paid more in rent for her smaller apartment than her tenants were paying, and that she needed a ground floor apartment because of medically substantiated knee problems and hypertension.[253] Nevertheless, the New York State Division of Housing and Community Renewal (DHCR) essentially held that Buhagiar's living conditions at the time she sought the eviction order were "adequate," and that she therefore failed to show the requisite "immediate and compelling necessity."[254] And while the New York appellate court suggested that immediate and compelling necessity may not be restricted to "inadequate housing,"[255] it affirmed the DHCR's decision to deny Buhagiar the requested eviction certificate.[256] The result, of course, was that Buhagiar was simply stuck in an undesirable situation, waiting for a tenant to voluntarily vacate, or perhaps commit some misconduct, in order to take full advantage of her investment.

Even if a New York landlord can do what Buhagiar could not and meet the good faith and compelling need tests, eviction certificates are unavailable, regardless of landlord need, when the tenant to be evicted is at least sixty-two, has lived in the building for at least twenty years, or has a permanent medical condition that disables him from "gainful employment."[257] The case of *Dawson v. Higgins*[258] brings to light the severity of such a rule for the landlord. Joan Dawson purchased a Manhattan brownstone housing two rent-controlled tenants in November of 1983.[259] She planned to evict those tenants when their leases expired so that she and her adult family members could personally occupy the spaces. But on June 19, 1984, just seven months after Dawson purchased the building, the above-described provision prohibiting eviction of any tenant who has rented for at least twenty years came into effect.[260] "The amendment applied to 'any tenant in possession at or after the time it [took] effect.'"[261] As such, the statute applied to preclude Dawson from evicting the long-

---

252 *Id.*
253 *Id.* at 202–04.
254 *Id.*
255 *Id.* at 203–04.
256 *Buhagiar*, 525 N.Y.S.2d at 204.
257 N.Y. UNCONSOL. LAW § 26-408(b)(1) (McKinney 1985).
258 610 N.Y.S.2d 200 (N.Y. App. Div. 1994).
259 *Id.* at 129.
260 *Id.* at 131.
261 *Id.*

standing tenant, even for her own personal use of the brownstone. Dawson challenged the provision as an unconstitutional taking and lost.[262] The New York court noted particularly the wide government "latitude in regulating landlord-tenant relations."[263] And though it did not explicitly so state, it evidenced a willingness to grant such latitude even when those relations are wholly private.

The restrictive interpretation of the need standard in *Buhagiar*, and the extreme protection given to longstanding, elderly, or ill tenants by New York statute, serve to explain why the rental housing market in New York is such a risky one for prospective investors. The relationship that a party purchasing rental property enters into is an inflexible and seemingly perpetual one. Even if a landlord is not disadvantaged by either of these rules, because he does not seek to occupy the property himself or to evict a needy tenant, he may be otherwise disadvantaged should he try to free himself of his investment. A New York landlord may seek an eviction certificate in order to remodel or demolish the premises,[264] but the city is prohibited from granting a certificate for such a purpose unless it finds that "there is no reasonable possibility that the landlord can make a net annual return of eight and one-half per centum of the assessed value of the subject property."[265] Thus, the New York investor is likely to consider long and hard before purchasing rental housing. Chances are quite good that he may never escape the investment.

ii. Good Cause Eviction as a Default Rule of Tenancy

Through a 1974 Anti-Eviction Act, the State of New Jersey subjects nearly all tenancy contracts to the requirement that landlords refrain from evicting their tenants absent good cause.[266] And unlike New York, New Jersey's provisions operate absent rent controls.[267] The New Jersey good cause eviction legislation provides that "no lessee or tenant . . . may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or

---

[262] *Id.* at 131–32.

[263] *Id.* at 132.

[264] N.Y. UNCONSOL. LAW § 26-408(b)(3)–(4) (McKinney 1985).

[265] *Id.* § 26-408(b)(5)(a).

[266] *See generally* N.J. STAT. ANN. § 2A:18-61.1 (West 2000).

[267] *See* Rabin, *supra* note 228, at 535. Similarly, voters in Oakland, California adopted a scheme of "just cause" eviction in 2002. Just Cause for Eviction Ordinance, OAKLAND, CAL., O.M.C. § 8.22.320(6) (2003). The ordinance that effectuates the scheme expressly states that its purpose is to remedy a spike in evictions caused by the elimination of rent control. *Id.* Thus, like New Jersey's rules, the Oakland good cause eviction scheme operates independent of rent control.

tenement leased for residential purposes . . . except upon establishment of one of [eighteen] grounds as good cause."[268]

That there exist eighteen causes for eviction implies that the grounds for eviction must be rather broad; it suggests, perhaps, that the requirement of proving good cause before evicting may even be perfunctory. A close examination of the enumerated grounds, however, demonstrates the contrary. Landlords are well protected against tenants that fail to pay rent, commit crimes or gross-negligence, or otherwise breach the lease in some significant way.[269] But where the New Jersey landlord merely seeks to dwell in the rental unit himself, he may find the statute wanting.

While landlords renting buildings with "three residential units or less" need only prove their desire to personally occupy in order to evict or refuse renewal to an existing tenant, landlords renting buildings with four or more units may not evict for personal need.[270] In *Stamboulos v. McKee*,[271] the landlord sought to demonstrate the invasiveness of this particular provision on landlord rights. Stamboulos purchased a four-unit apartment building partially occupied by month-to-month tenants who had been there for a number of years.[272] On the same day as the transfer of title, Stamboulos gave notice to defendants that their lease was being terminated.[273] The notice to quit was given at a time when all that was required of a landlord to terminate a month-to-month tenancy in New Jersey was a thirty-day notice.[274] Twenty-six days after the notice was given—and just five days before the lease was to terminate—the New Jersey legislature passed the good cause eviction statute described above.[275] Because Stamboulos's building contained four units, his desire to personally occupy the unit was irrelevant; no good cause was demonstrated.[276] Stamboulos argued that the application of the new statute, and its effective deprivation of his right to occupy his own building, amounted to an unconstitutional violation of his "fundamental property rights."[277]

---

[268] N.J. STAT. ANN. § 2A:18-61.1 (West 2000).

[269] *Id.* § 2A:18-61.1(c).

[270] *Id.* § 2A:18-61.1(l)(1)–(3).

[271] 342 A.2d 529 (N.J. Super. Ct. App. Div. 1975).

[272] *Id.* at 530.

[273] *Id.*

[274] *Id.*

[275] *Id.*

[276] *Id.*

[277] *Stamboulos*, 342 A.2d at 531.

The New Jersey appellate court disagreed. It first held that the new statute applied to limit the grounds for which Stamboulos could evict his tenant, even though he purchased the building and served notice to quit before its passage.[278] The court held that before the thirty-day notice had run, Stamboulos had no vested right to evict and thus there was no problem with applying the new statute to limit him to evicting for good cause.[279] As to Stamboulos' substantive objections, the court noted his argument that the new legislation "in effect converts a month-to-month tenancy to a perpetual tenancy, terminable . . . at the will of the tenant," but only for "good cause" by the landlord.[280] Nevertheless, the court upheld the statute on constitutional grounds, finding it an appropriate exercise of governmental power.[281] The legislative history demonstrated that the purpose of the statute was to rectify a "critical shortage of rental housing space in New Jersey," and the court apparently found a good cause eviction rule an adequate means of addressing that problem.[282]

The *Stamboulos* court seemed to recognize the absurdity of the statute's failure to "permit the good faith intention of the landlord to occupy the rented premises to serve as a reason for terminating the tenancy or obtaining possession."[283] It disclaimed any knowledge of "whether this was an oversight or not."[284] Absent an express provision in the statute providing good cause for owner desire to occupy, the court did not feel it could create such a rule.[285]

*Stamboulos* demonstrates well the pitfalls of a good cause scheme for the New Jersey landlord.[286] He was prevented from making a *needed* use of the property by a statute that *did not even exist* at the time of his investment in the building. What potential investor would pursue rental property under such a tenant-friendly regime? In the face of recent New Jersey jurisprudence providing that the Anti-Eviction Act is to be "construed liberally with all doubts construed in favor of a

---

[278] *Id.* at 531.

[279] *Id.*

[280] *Id.* at 532.

[281] *Id.* at 533.

[282] *Id.* at 531.

[283] *Stamboulos*, 342 A.2d at 532.

[284] *Id.*

[285] *Id.*

[286] Landlords seeking to "occupy" their units for business purposes, rather than as a personal residence, have suffered the same fate as Stamboulos. *See, e.g.*, Gross v. Barriosi, 401 A.2d 1127 (Passaic County Ct. 1979); Puttrich v. Smith, 407 A.2d 842 (N.J. Super. Ct. App. Div. 1979).

tenant," the potential landlord's incentives appear all the more bleak.[287]

New Jersey is certainly not alone among American jurisdictions with stand-alone good cause eviction regimes. Washington, D.C. has such a regime, which, like New Jersey's, operates independent of rent control and is exceptionally tenant-friendly.[288] The D.C. legislation sets out a limited number of reasons for which a landlord may terminate or refuse to renew a tenant's lease.[289] And then, much like European law—particularly that of France—it forestalls eviction for *any reason*, including the enumerated "good" causes, in freezing weather.[290] Specifically, the statute provides:

> Notwithstanding any other provision of this section, no housing provider shall evict a tenant on any day when the National Weather Service predicts at 8:00 a.m. that the temperature at the National Airport weather station will fall below 32 degrees Fahrenheit or 0 degrees Centigrade within the next 24 hours.[291]

Washington, D.C.'s good cause eviction legislation, like that of most jurisdictions, has been interpreted liberally, such that it rather substantially restricts the rights of landlords.[292] *Even seizing mortgagees* are bound by the D.C. law, and are therefore precluded from evicting existing (non-mortgagor) tenants absent good cause.[293] Washington appellate courts have acknowledged that this application of the good cause eviction requirement "tend[s] to depress the value of the property," but they continue to apply the statute to mortgagees nonetheless.[294]

b. "Special" Tenancies

A surprising number of American states have adopted good cause eviction schemes for particular types of tenancy contracts that

---

[287] 224 Jefferson St. Condo. Assoc. v. Paige, 788 A.2d 296, 302 (N.J. Super. Ct. App. Div. 2002).

[288] *See* D.C. CODE § 42-3505.01 (2001); *see also* N.H. REV. STAT. ANN. § 540:2 (1985) (providing for a scheme of good cause eviction in New Hampshire).

[289] D.C. CODE § 42-3505.01 (2001).

[290] *Compare* Law No. 90-449 of May 31, 1990 [J.O.] [Official Gazette of France], June 2, 1990, p. 6551, art. 21, *available at* http://www.legifrance.gouv.fr (follow "Les autres textes législatifs et réglementaires" hyperlink), *with* D.C. CODE § 42-3505.01 (2001).

[291] D.C. CODE § 42-3505.01(k) (2001).

[292] *See* Adm'r of Veterans Affairs v. Valentine, 490 A.2d 1165, 1168 (D.C. 1985) ("eviction restrictions . . . are only a part of a comprehensive legislative scheme to protect the rights of tenants and therefore must be construed liberally").

[293] *Id.*

[294] *Id.* at 1170.

state legislatures typically deem "special," and thus worthy of hefty tenant protection. The most striking example of such a tenancy is that in a mobile home park. The basic principle of tenant tenure provisions in these areas is that owners of mobile home parks may not evict mobile home owners—and thereby force them to pick up and move their mobile homes to another locale—absent "good cause."[295]

Much like good cause eviction requirements imposed upon tenancies in traditional dwellings, good cause eviction schemes adopted for mobile home parks are typically passed to alleviate a "major shortage of space for mobile homes."[296] The shortage in the mobile home context is often much more significant than the shortage of rental housing stock in general because many municipalities either "exclude mobile homes altogether" or restrict the areas in which they may be set up.[297] Demand quite often exceeds supply.

To give mobile home owners ("tenants" in the mobile home park) some degree of protection in a landlord-focused market, a number of states have turned to good cause eviction rules. Typically, park owners may not evict mobile home owners except for "nonpayment of reasonable rent, continuing violation of reasonable park rules, continuing violation of mobile home laws, or change in the use of the land."[298] To date, at least twenty states have adopted a good cause eviction scheme for mobile home tenants.[299]

### 2. The Impact of Good Cause Eviction on American Landlords and the Rental Housing Market

The common thread linking the New York, New Jersey, and Washington, D.C. good cause eviction rules for ordinary dwellings and the adoption of such schemes for special tenancies is, at base, the

---

[295] *See generally* Thomas Moukawsher, Comment, *Mobile Home Parks and Connecticut's Regulatory Scheme: A Takings Analysis*, 17 CONN. L. REV. 811 (1985).

[296] *Id.* at 814.

[297] *Id.* at 813–14.

[298] *Id.* at 817.

[299] *See* ALASKA STAT. § 34.03.225 (1976); ARIZ. REV. STAT. ANN. § 33-1476 (1975); CAL. CIV. CODE § 800.71 (West 1990); COLO. REV. STAT. ANN. §§ 38-12-202 to -203 (West 1973); CONN. GEN. STAT. ANN. § 21-80 (West 1974); DEL. CODE ANN. tit. 25, §§ 7007, 7010A (1971); FLA. STAT. ANN. § 723.061 (West 1984); ME. REV. STAT. ANN. tit. 10, § 9097 (1987); MD. CODE ANN., REAL PROP. § 8A-1101 (West 1976); MASS. GEN. LAWS ANN. ch. 140, § 32J (West 1950); MINN. STAT. ANN. § 327C.09 (West 1982); N.H. REV. STAT. ANN. § 205A:3 (1988); N.M. STAT. ANN § 47-10-5 (West 1978); N.Y. REAL PROP. LAW § 223 (McKinney 1974); 68 PA. STAT. ANN. § 398.3 (West 1976); R.I. GEN. LAWS § 31-44-2 (1956); TEX. PROP. CODE ANN. § 94.201 (Vernon 2002); UTAH CODE ANN. § 57-16-4 (1953); VT. STAT. ANN. tit. 10, § 6237 (1973); WASH. REV. CODE ANN. § 59.20.080 (West 1977). *But see* S.C. CODE ANN. § 27-47-530 (1976) (allowing a landlord to evict if rent is not paid within *five days* of its due date) (emphasis added).

implementation of social policy. *Some* jurisdictions purport to adopt these requirements in an aim to cure housing shortages.[300] *All* justify good cause eviction schemes by pointing to "what they perceive as a strong public policy in favor of providing decent housing."[301] It is a laudable goal, of course.

The problem is that using a good cause eviction scheme to attempt to effectuate this goal necessarily, and unduly, burdens private landlords. Who should bear the burden of ensuring adequate housing in this country—the government or private landowners? New Jersey has clearly recognized this tension and answered that question. Its supreme court has held that application of the Anti-Eviction Act necessarily means that "landlord rights must to some extent and on general welfare grounds defer to the needs of the tenant population in [the] state."[302] Most jurisdictions are not so candid about the effects of a good cause eviction scheme. They seem to opine that tenants deserve special protection by the law and to conclude that good cause eviction requirements are the only—or at least the best—means of achieving that protection. But the cost of the protection to private individuals carrying the status of "landlord" is seldom remembered. Two private interests are involved, and American states that adopt good cause evictions schemes must recognize that in so doing, they are impliedly adjudging "that the tenant's interest in his home and the public's interest in maintaining the supply of rental units are more important than the landlord's investment."[303]

The experiences of both the European and American jurisdictions that have adopted good cause evictions schemes should certainly give a state considering the balance between landlord and tenant rights pause. Both here and abroad, empirical evidence has shown that good cause eviction schemes serve neither to boost rental supply nor to bolster its quality. In fact, precisely the opposite is true.[304]

In the United States, an examination of rent control schemes imposed on ordinary dwellings demonstrates the inability of good

---

[300] *See, e.g.*, Rea & Gupta, *supra* note 162, at 105, 108 (noting that rent control, and likewise good cause eviction, first gained sway in this country as a response to housing shortages caused by World War I).

[301] Salzberg & Zibelman, *supra* note 15, at 64.

[302] Franklin Tower One, L.L.C. v. New Mexico, 725 A.2d 1104, 1110 (N.J. 1999).

[303] Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 544 (1982).

[304] For a discussion of the abysmal long term effects of good cause eviction in Sweden and the United Kingdom, for instance, see *supra* notes 164–69, 173–81 and accompanying text.

cause eviction rules to remedy housing problems. Studies of rent control schemes with good cause eviction requirements that formerly existed in Boston, for example, have demonstrated that the regime's institution promoted a sixty-seven percent drop in construction in the private market.[305] Other cities saw a boost in construction over that same period.[306] In New York, rent controlled apartments with a good cause eviction requirement are dilapidated much more frequently than their non-rent-controlled counterparts—a difference of twenty-nine to thirty percent.[307] The housing situation is so bad in New York that one housing policy expert has remarked:

> One does not have to be an advocate of laissez-faire, nor an ideological conservative to remark that when it comes to housing in New York, the public sector has done quite enough already. Up to now every new increment of public intervention has made things worse. We have taken so many unsuccessful twists and turns along the path of well-intentioned tinkering that perhaps it is time to test the possibility that generally reasonable incentives and disincentives of an unconstrained market might do a better job of allocating and conserving the housing stock.[308]

Even where good cause eviction has stood alone in this country, without rent control to boost its effect, it has failed miserably. Good cause eviction schemes in the mobile home context have had near disastrous results. It might have been anticipated—merely through the application of basic economic principles—that a good cause eviction regime would do nothing to remedy a supply problem. Indeed, by discouraging landlord investment in a venture that may quickly become unprofitable, good cause eviction requirements should have been expected to *increase* problems with supply. The market evidence shows that good cause eviction schemes in mobile home parks have done precisely that.

Connecticut, one of the earlier states to enact a good cause eviction scheme for mobile home park tenants, has seen, in the wake of the scheme's adoption, a proliferation of park closings.[309] And even beyond supply problems, Connecticut has been forced to confront rather serious park owner abuses, exceptionally lengthy delays in evic-

---

[305] Rea & Gupta, *supra* note 162, at 128 n.68.

[306] *Id.*

[307] *Id.* at 129 n.73.

[308] SALINS, *supra* note 152, at xix.

[309] Moukawsher, *supra* note 295, at 832 n.107.

tion proceedings, and a general state of increased animosity among landlords and tenants.[310]

Good cause eviction schemes both for ordinary dwellings and in the mobile home park context, then, have wholly failed to meet their social and economic goals of protecting tenants by insuring adequate housing and rectifying social problems. The reality is that they have decreased both the availability and quality of rental housing.

## V. A GROWING NEED TO RESIST THE INTERNATIONAL MOVEMENT

Rules restricting a landlord to evicting a tenant or refusing to renew his lease for good cause, quite obviously, represent a rather substantial intrusion upon private property rights. Blackstone defined the essence of the right to property as the "free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land."[311] Even at civil law, the right of ownership has been defined as an absolute one.[312] A property owner in any legal system "has an inherent right to control the disposition of her property as she sees fit."[313] Indeed, most agree that there is no concept of ownership divorced from rights of use and abuse.[314]

Certainly any landowner that enters into a lease is voluntarily restricting his own right of dominion over his land. But that intrusion upon the rights of the landlord should go only as far as his lease agreement has permitted. Lease has always been regarded as a temporary right.[315] When the period for which a landlord consented to restriction of his use has ended, the landlord's right to retake the property is generally considered unfailing. The state should not be able to change this result without the landowner's consent, as the right to enjoy property and to be free from governmental intrusion "is the essence of liberty."[316]

Good cause eviction requirements intrude upon the province of the landlord in such a fundamental way that they can only be said to

---

[310] *Id.* at 831–32.

[311] 1 WILLIAM BLACKSTONE, COMMENTARIES *139. Blackstone refused to accept intrusion upon private owners' rights to achieve social goals. "So great, moreover, is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community." *Id.*

[312] The essence of property at civil law is that "it is exclusive, that is to say, it consists in the attribution of a thing that to a given person is to the exclusion of all others." PLANIOL, *supra* note 149, at 378.

[313] Salzberg & Zibelman, *supra* note 15, at 62.

[314] Block v. Hirsh, 256 U.S. 135, 165 (1921) (McKenna, J., dissenting).

[315] *Id.*

[316] *Id.*

alter the very notion of what it means to hold property.[317] "[T]he 'sticks in the bundle of rights' that compose the property interest in a leasehold have been reallocated between landlord and tenant" to achieve social and economic goals.[318] This redistribution is significant—it deprives the landlord of some of his most basic rights, in effect, converting a term tenancy he perfected into something more akin to a life estate, terminable at will by the tenant but lasting in near perpetuity for the landlord.[319] There simply is no theoretical justification for such a subversion of a property owner's rights. The oft-proffered justification that "tenants are more numerous than landlords and that in some way this disproportion . . . makes a tyranny in the landlord"[320] simply does not withstand critical scrutiny.

What is perhaps most disturbing about the proliferation of good cause eviction requirements is that they seem to utterly fail at meeting their intended goals. Economically, the schemes are not beneficial. In the long term, they certainly do not serve to increase rental housing supply, which is ironic given that this is the principal reason offered for their promulgation.[321] Indeed, evidence from Sweden, and even closer to home in Connecticut, shows that good cause eviction requirements tend to *decrease* the rental housing stock. Moreover, good cause eviction requirements do not appear to make any headway in promoting the social goal of decent housing for every individual. To the contrary, they serve to lessen the quality of rental housing, while simultaneously diminishing its quantity.

The failure of good cause eviction schemes to even begin to remedy housing problems in Europe and in their limited domain in the United States just underscores the importance of the recognition in this country that good cause eviction must not be further imported. There is no reason to believe that a scheme which has not worked abroad, and has not worked either alone or in combination with rent control here, will prove useful.

Protection of the social right to housing is important, and to some extent, the rights of individuals in private property will simply have to suffer. With a homelessness crisis that has by now touched

---

[317] This modification to the lease relationship has been described as one "contrary to every conception of leases that the world has ever entertained, and of the reciprocal rights and obligations of lessor and lessee." *Id.* at 159.

[318] Glendon, *supra* note 303, at 544.

[319] *Id.* at 543.

[320] *Block*, 256 U.S. at 161 (McKenna, J., dissenting).

[321] "Generally speaking, from a comprehensive perspective, it is the long-term, efficient functioning of the sector as a whole that is the prime objective of policy." ANGEL, *supra* note 143, at 295.

most parts of the world,[322] it is clear that something must be done. Governments must aid in insuring their populations the safest and best housing possible. But the dream of *Les Enfants de Don Quichotte* is indeed an impossible one if it is to be remedied through good cause eviction schemes. They are simply not a suitable means of achieving that goal.

The recent spread of the view of housing as a fundamental right in Europe cannot help but further permeate American law and society. At least nine countries now recognize the availability of decent housing as a basic human right.[323] And already, this movement is taking hold in this country.[324] As recently as 2002, voters in Oakland, California approved a scheme of good cause eviction with a view to protecting the "human right" to "safe, decent, and sanitary housing."[325] The United States government has likewise detailed the social objective of "ensuring 'a decent home for every family at a price within their means.'"[326] In the wake of Hurricane Katrina in 2005, the State of Louisiana offered incentives to small landlords for repairing storm-damaged rental housing in an effort to provide affordable rental housing to low income families.[327] The view of the right to adequate and affordable housing as one which society must ensure to all, then, is stronger than ever in the United States.[328]

The danger here is that we fall into the trap of believing that good cause eviction requirements can help us protect this right and to meet our social goals on housing. As we come closer in the United States to accepting the burgeoning international social policy on the right to housing, the question becomes whether we can possibly stave off the flawed international solution to the housing problem. I argue that we must, or face the fate of our foreign counterparts that have tried good cause eviction schemes and failed on both economic and social fronts. The intrusion of the scheme must be stopped, lest it damage the American housing situation more.

---

[322] *See* HUGHES, *supra* note 157, at 398.

[323] *See supra* note 11.

[324] *See, e.g.*, W. Dennis Keating, *Commentary on* Rent Control and the Theory of Efficient Regulation, 54 BROOK. L. REV. 1223, 1226 (1989) (discussing Epstein, *supra* note 144).

[325] Just Cause for Eviction Ordinance, OAKLAND, CAL., O.M.C. § 8.22.300 (2003).

[326] ANGEL, *supra* note 143, at 15.

[327] Press Release, Louisiana Recovery Authority, LRA Explains Occupancy Rules for Small Rental Property Program: Landlords Warned Against Evicting Tenants in Order to Apply for Program (March 13, 2007), *available at* http://www.lra.louisiana.gov/pr031307rental.html.

[328] *See* Berger, *supra* note 5, at 324–25 (proposing that the United States "guarantee" basic housing to all individuals).

**Legal Assistance of Western New York, Inc. ®**

*We provide free legal aid to people with civil legal problems in western New York.*

www.lawny.org

# General Eviction Information for New York

### What is an eviction?

An eviction is a court process a landlord can use to evict a tenant from a rented apartment, house, or mobile home.

An eviction case, which lawyers call a Summary Proceeding, is started when the landlord has someone else serve the tenant with a "Notice of Petition" and a "Petition." The "Notice of Petition" has the time, date, and place of the court hearing. The "Petition" describes the reason why the landlord wants to evict the tenant. You must be served with both of these papers at least 10 days before the court date. The court date can't be more than 17 days after you are served.

Just because a landlord starts an eviction case doesn't mean that the landlord will win. Tenants have certain rights, and there are several defenses to an eviction action.

### Can my landlord evict me without going to court?

No.

The landlord must go to court, must win the case, and then must pay a fee to have a law enforcement officer properly evict you. This is true even if you owe rent, your lease has ended, or if you live in a rooming house or have stayed in a hotel room for at least 30 days.

It is a class A misdemeanor for anyone to illegally evict you by:

- Changing the locks,
- Padlocking the doors,
- Taking out your furniture or property,
- Removing the door of the apartment or house,
- Turning off the electricity or water,

- Doing, or threatening to do, anything else that keeps you out of your house or apartment (Real Property Actions and Proceedings Law Section 768).

If your landlord tries any of these things, call the state, city or village police. Please see our article on Illegal Evictions for more information.

### When can I be evicted?

1. Written Lease:

If you have a written lease for a specific amount of time, you can only be evicted if:

- The lease is up. If your lease expires after October 12, 2019 your landlord must also notify you that the lease is not going to be renewed. If the lease was for less than one year, the notice must be at least 30 days in advance. If the lease was for at least one year, but less than two years, the notice must be at least 60 days in advance. If the lease was for two years or more, the notice must be at least 90 days in advance. If you did not receive this notice, you should not be evicted.)
- You owe rent and you were served with a 14 day demand for the rent, or
- You have seriously violated the terms of your lease and a term of your lease causes it to expire as a result of the violation.

Your landlord must prove in court that one of the above is true.

2. Month-to-Month Tenant:

If you don't have a written lease and you pay rent monthly, or your written lease is month-to-month, you can be evicted only if:

- You owe rent and you were served with a 14 day demand for the rent, or
- You received a full month's notice that the landlord is not going to renew your month-to-month lease. If your landlord terminates your month-to-month agreement after October 12, 2019, there are new notice requirements. If you have lived there less than one year, the landlord must provide at least 30 days' notice. If you have lived there more than one year, but less than two years, the landlord must provide at least 60 days' notice. If you have lived there more than two years, the landlord must provide at least 90 days' notice.

Again, the landlord must prove in court that you owe rent and the landlord made a proper demand, or that you got a proper termination notice.

### Special Protections

If you live in subsidized housing, also called "HUD housing" or "Section 8 housing", there are special rules for evictions. Read any notices you get carefully. See our flier on these programs and be sure to call a lawyer if you get a violation or termination notice, or court papers.

### How do I defend myself in an eviction?

If you appear in court and tell the judge that you disagree with the landlord, then you have the right to have the case postponed. If you ask for an adjournment, the court must postpone the case for at least 14 days.

You may have defenses that will cause the court to dismiss the landlord's case against you. If the landlord is trying to evict you for "Non-Payment of Rent," you should tell the judge if any of the following apply:

- You did not receive a letter by certified mail telling you the rent was not received at least five days after it was due.
- You were not served with a written 14 day demand for the rent.
- The landlord is trying to charge you for late fees or other charges that are not part of your regular rent.
- You paid the rent, or you tried to pay the rent. Bring proof (receipt or witness) to court.
- You are holding back the rent because the landlord won't make repairs. (See our flyer "When a Landlord Won't Make Repairs" before withholding rent.) Bring a copy of the housing inspector's report, photos, and any other proof.
- The Department of Social Services is holding back the rent because the landlord won't make repairs. Bring a copy of the notices from your worker.
- Your landlord did not give you rent receipts.

If the landlord is trying to evict you as a "Holdover Tenant" (when the landlord says your lease is up or they want you to leave regardless of whether you owe rent), you should tell the judge if any of the following apply:

- You did not receive a notice from the landlord telling you that they were not going to renew your rental agreement, within the times set out above.
- The landlord gave you proper notice, but did it because you complained about poor conditions or called the housing inspectors (see our flyer "Retaliation" for more information). Bring proof that you made the complaint to court.
- Your lease has not expired.
- You have taken steps to correct any lease violations that might have occurred.

There are also very specific rules for how your papers have to be served. If a landlord does not follow the rules, the law often requires the judge to dismiss the case.

### Should I go to court?

If you are served with eviction papers, you should go to court.

If you disagree with what the landlord says, and you ask the judge to postpone the case, the judge is required to postpone the case for at least 14 days.

If you lose the case, or if you agree that the landlord's claims are correct, the court will choose a date by which you must move. If you are in court, you can ask the judge for extra time to move. If you do not move out by the date the judge gives you, the landlord can ask a law enforcement officer to serve you with a Warrant of Eviction. When law enforcement gives you the "Warrant," they will also give you at least 14 more days to move. If you own your own home in a mobile home park, the "Warrant" will be for 30 days or 90 days.

If you don't go to court, the judge will probably grant the landlord a judgment for everything they asked for in their papers. This is called a "Default Judgment."

### What happens in court?

Be on time, or be early. Your case may be the last one called, or it may be the first one. If you are even a few minutes late, the judge may have already called your case and made a decision. There are rules for how long the judge should wait, but you don't want to have to rely on those rules because you missed your hearing.

When your case is called, answer "Here, Your Honor" loudly and clearly. Go to the front of the courtroom. When the judge asks for your side of the story, briefly tell the judge the facts of your case and any defenses you want to raise. Be polite and calm, call the judge "Your Honor", and don't talk while someone else is talking. This can be hard when you are nervous or angry, but it helps your case. Show the judge any proof you brought to court with you.

If you ask for a postponement, the judge is required to postpone your case for at least 14 days. If the judge won't even let you talk, or won't let you raise any defenses or counterclaims, you can complain to the New York State Commission on Judicial Conduct. **http://www.scjc.state.ny.us/ (http://www.scjc.state.ny.us/)** You can also call 585-784-4141.

### Counterclaims

You have the right to raise any counterclaims you have against the landlord in court. For example, if you have proof that there were serious bad conditions in the residence, the court should hear your proof that rent should be reduced. A reduction in rent is called an abatement. Unfortunately, some judges incorrectly think that you can't raise this defense if you owe rent.

### The Decision

If the judge agrees with you, the case will be dismissed. You win, and do not need to move out.

If the judge agrees with the landlord, and you lose, there is still a chance that you will not have to move. If you are being evicted for "Non-Payment of Rent," you can stop the eviction by paying all of the rent that is owed. You can do this any time up until the "Warrant of Eviction" is executed. If you are being evicted for a lease violation, the judge should give you 30 days to correct the lease violation. If you correct the violation, that should stop the eviction, but you need to notify the court and ask the judge to cancel the warrant.

### The Actual Eviction

If the judge orders you to move, but you do not move, the landlord can ask a law enforcement officer to serve you with a "Warrant of Eviction." When you receive the Warrant, law enforcement must give you 14 days to move. You will have 30 days or 90 days if you own a mobile home in a mobile home park (30 days if you are being evicted for non-payment of rent and 90 days if you are being evicted for some other reason).

The officer is required to notify you when they will be coming back to enforce the "Warrant of Eviction." They can only enforce the Warrant on a business day (Monday thru Friday, and not on a holiday). Check with the officer who gives you the notice to be sure of when they will come back. If you have not moved out, the officer can remove your property and let the landlord change the locks.

The landlord is supposed to store your property somewhere safe. Your property should not just be thrown out, or put on the curb. Also, your landlord cannot refuse to give back your property until you pay rent. If your landlord does any of these things or even threatens to, call a lawyer right away. Although the law is not clear about how long the landlord must store your property, landlords often will try to throw away or sell the property after thirty days. If you have not contacted the landlord to get your property back, you may not be able to successfully sue the landlord for the value of your property.

If your property is put in storage, try to move it to your new home as soon as you can. After thirty days it can be difficult to recover property which has been placed in storage.

*****



Last Review Date: June 27, 2019

---