Tenant Unions: Growth of a Vehicle for Change in Low-Income Housing

I. THE MOVEMENT

A. INTRODUCTION

In the last decade a new phenomenon has emerged in the rental housing field. Tenants have been organizing into unions in order to strengthen their position in relation to their landlords. This young movement may reflect the beginning of a new era in the relationship of landlords and tenants. Because of this possibility, it is important to examine the growth of the tenant union movement. This article is an attempt to take an overall look at the growth of tenant unions: the reasons for their sudden emergence; their impact upon the country's legislatures and courts; the problems they have encountered; and the future of the movement.

The common law has long been heavily weighted in favor of the landlord as opposed to the residential tenant.[1] The most obvious example of common law doctrine that works against the tenant of rental housing is the "doctrine of independent covenants." This doctrine states that the tenant's agreement to pay rent is independent from the obligations to which the landlord agrees in the lease. The tenant must pay his rent regardless whether the premises are habitable. State courts have long adhered to such doctrines of the common law and

[1] T. FLAUM & E. SALZMAN, URBAN RESEARCH CORPORATION REPORT: THE TENANT'S RIGHTS MOVEMENT 5 (1969) [hereinafter cited as FLAUM & SALZMAN].

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have largely failed to alleviate the plight of the tenant in this century.

In 1949 the federal government declared that it was committing itself to the "goal of a decent home and a suitable living environment for every American family."[2] In pursuit of this "goal," many states and cities enacted exhaustive housing standard codes in the 1950's.[3] These codes have been of some help to tenants, but it is generally conceded that they have failed to improve the condition of the millions of Americans living in substandard housing.[4] One of the major reasons that the housing codes have resulted in little improvement for low-income tenants is that the individual tenant still lacks the know-how, the perseverance, and the power to fight for better living conditions. Tenant unions are enabling tenants to work within the common law, using the housing codes, to improve their living conditions.

B. LABOR UNIONS AND TENANT UNIONS

Speaking in general terms, the reasons for the growth of tenant unions in the 1960's are analogous to the growth of labor unions at the end of the 19th century and continuing into the early 1900's.[5] The background of the growth of labor unions was of course the industrial revolution. The growth of large industries led to depersonalization of the employer-employee relationship, which formed the psychological background for the labor union movement.[6] The growth in this century of corporate and individual absentee landlords[7] has caused the same loss of a personal relationship between landlord and tenant.

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[2]The Housing Act of 1949, 42 U.S.C. § 1441 (1970).

[3]Under the Federal Housing Act of 1954, cities were required to establish a workable program for the elimination of slums and urban blight in order to receive funds under the urban renewal program. Comment, *Rent Withholding and the Improvement of Substandard Housing*, 53 CALIF. L. REV. 304, 315 (1965).

[4]Housing Code administration has failed largely because of lack of funds, lack of expertise and personnel, bureaucratic overlap, and lack of allocation of resources. When continuing violations are reported, the courts have been lenient in giving continuances, or levying small fines. Comment, *supra* note 3, at 316, 319. "[W]here the landlord's operation was profitable, fines for housing-code violations effectively amounted only to a tax on his business." Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L. J. 1368, 1371-1372 (1968). *See also* Gribetz and Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254, 1276 (1966).

[5]The first local labor unions were formed in the 1870's. But these early efforts were short-lived, and union activity ceased for many years. The union movement came into fruition in the last part of the 19th century, with the major unions beginning their existence after 1880. C. DANKERT, CONTEMPORARY UNIONISM 22 (1948).

[6]*Id.* at 6.

[7]*See* Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, *supra* note 4, at 1381.

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When a tenant knows who his landlord is and where he can be reached, he has some hope that his grievances will be heard and remedied. But when the landlord is a downtown real estate corporation buttressed by layers of corporate officers and receptionists, the tenant is overwhelmed by the procedure required to register a complaint. This loss of personal contact between landlord and tenant forms the psychological background for the growth of tenant organizations.

The paramount reason for the growth of labor unions was the total lack of bargaining strength of the individual worker. Individually, workers could not contest their wages and working conditions. Their only weapon was a threat to quit. This threat was ineffective because of the overly abundant labor market.[8] An employer could easily replace a worker who quit because of working conditions or wages. In the 1960's, the tenant in low-cost housing found himself in an analogous position. He had no bargaining power. The increasing shortage of low-cost housing[9] not only makes it easier for a landlord to replace a tenant that has moved because of poor housing conditions, but makes it more difficult for such a tenant to find other housing. Just as a combined threat through the agency of a trade union is more effective than is a series of threats by individual workers, a combined threat by a majority of a landlord's tenants is much more effective than threats by individual tenants. If one hundred of a landlord's tenants stop paying rent, he can probably evict them, but the cost to him would be prohibitive.[10] There are of course many weaknesses in this analogy, but the basic reasons for the growth of tenant unions and the theory of group power is closely analagous to that of the labor unions. Some writers[11] have concluded that even the strategy of tenant union organizers should be similar to the early labor efforts.[12]

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[8]*See* C. DANKERT, *supra* note 5, at 6.

[9]"In 1969, Boston was reported to be short 22,000 units of low-income housing. . . . There are long waiting lists for public housing in every city. San Francisco, for example, currently has a waiting list of 4,940 applicants for any vacancies that may occur in their (sic) 5,730 units of public housing." The vacancy rate in New York City was in 1969 at a low of 1.23 per cent. FLAUM & SALZMAN, *supra* note 1, at 3-4. In January of 1970, San Francisco's vacancy rate was 2.3 per cent. San Francisco Chronicle, Jan. 22, 1970 at 4, col. 4. Typical of the decline in the vacancy rate in large cities is Pittsburgh. In 1960 the vacancy rate was 4.1 per cent. By 1965 it had dropped to 2.2 percent. Krumholz, *Rent Withholding As An Aid to Housing Code Enforcement,* 25 J. HOUSING 242 (1968).

[10]*See* p. 26 and note 152 *infra.*

[11]*E.g.,* Note, *Tenant Unions: An Experiment in Private Law Making,* HOUSING FOR THE POOR: RIGHTS AND REMEDIES 100 (New York University School of Law, Project on Social Welfare Law, Supplement No. 1, 1967).

[12]Tenant union organizers should concentrate their efforts on salvagable buildings. The C.I.O. concentrated its early efforts on substantial industries and employers. *Id.* at 116.

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The legal struggle of the early labor unions was basically twofold. They sought recognition of employees' right to organize and bargain collectively, and they fought for better working conditions and wages for their members.[13] In 1935 the National Labor Relations Act officially recognized the right of workers to organize into unions and bargain collectively without interference from employers.[14] Tenant unions are now in the process of fighting basically for the same objectives. Their struggle in the courts and legislatures is not only for decent housing and rents for member tenants, but for the legally sanctioned right to organize and bargain as representatives of tenants to insure the endurance of a new balance of power between tenant and landlord.

C. EARLY EFFORTS AT TENANT ORGANIZATION

Tenants first attempted to organize in the 1920's and 1930's. The organizations were small and inadequately organized groups of slumdwellers. Their principal purpose was to protest their miserable living conditions and demand improvement.[15] The primary tactic of these tenant unions was picketing the building in which they lived in hopes of bringing public pressure upon the slumlords. Pressure, however, was instead turned against the picketers. Picketers were convicted of disorderly conduct in New York,[16] and Florida quickly passed a law making resisting eviction a criminal offense.[17] In general, the movement in the early 1930's failed because the "slum problem" was not a major political issue, and because of public fear of communism and socialism during the depression. Describing reaction to his attempts to seek legislative assistance for cleaning up the slums, Langdon Post wrote, "They called it socialism, communism, un-American, and in every way repugnant to our best traditions."[18] The political climate was not yet ready for tenant unions.

[13]For a thorough discussion of the legal problems faced by labor unions, *see* C. GREGORY, LABOR AND THE LAW (1st ed. 1946).

[14]"Employees shall have the right to self-organization, to form, join, or assist labor organizations . . . ." 29 U.S.C. § 157.

[15]L. POST, THE CHALLENGE OF HOUSING 157-158 (1938).

[16]An interesting account of these cases is reported in the INT'L. JURIDICAL ASS'N. BULL., Vol. 3, Nos. 5, 10 (1934).

[17]FLORIDA L. 1933, C 16066, COMP. GEN. L. (1934) as amended FLA. STAT. § 821.31 (1965).

[18]"I distinctly remember being branded a Communist when in 1932 as a member of the New York State Assembly I introduced a bill which would have pledged the state's credit for the elimination of the slums and the building of decent housing for those who lived in them." L. POST, *supra* note 15, at 142-143.

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By the 1960's the political climate was ripe for organized tenant efforts to improve their living conditions. The federal government had encouraged participation of the poor in events and conditions affecting their lives.[19] Another catalyst for organized tenant action was the popularity of community organization in the civil rights movement.[20] The slum problem had become a national issue, largely because of the advent of television and its popularity. Television not only brought a picture of slum conditions into the homes of all Americans,[21] it brought a picture of the rest of American life into the slum-dwellers' "home."

The first large-scale organization of tenants occurred in New York in the winter of 1963-64. Led by Jesse Gray, it took the form of a rent strike demanding repairs of dilapidated buildings, and lower rent.[22] Tenants simply stopped paying rent. Later they were ordered to pay their rent to the court. At that time, this was a dynamic action for a group of tenants. With the help of a favorable ruling by a trial court judge,[23] one of the striking organizations exerted great pressure on one landlord, who failed to claim the back rent held by the court.[24] The money was returned to the tenants for repairs, and the organization broke up. This type of short term, rent strike-oriented organization of tenants spread immediately to Washington, Cleveland, and Providence.[25]

D. TENANT UNIONS

In Chicago in the summer of 1966, amid scattered "rent strike" organization, the Southern Christian Leadership Conference, with the organizational and financial assistance of the AFL-CIO, began organizing tenant unions.[26] Rather than organizing members of single buildings as in the rent strike groups, the unions included tenants

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[19]*See* Grad, *Legal Remedies For Housing Code Violations*, 14 NATIONAL COMMISSION ON URBAN PROBLEMS RESEARCH REPORT 1, 139 (1968).

[20]Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, *supra* note 4, at 1373.

[21]Writing about the necessity in 1938 of making the slums a political issue, Langdon Post wrote that "the slum had to be brought to the homes of those who lived outside it. . . ." L. POST, *supra* note 15, at 158.

[22]New York Times, Dec. 31, 1963, at 1, col. 7; *Withholding Rent: New Weapon Added To Arsenal For War On Slumlords*, 21 J. HOUSING 67, 70 (1964).

[23]*Withholding Rent: New Weapon Added to Arsenal for War on Slumlords*, *supra* note 22, at 70-71.

[24]*Id.* at 71.

[25]*Id.* at 72.

[26]*Rent Withholding, Rent Strikes, Tenant Unions, Mandatory Statewide Housing Standards*, 24 J. HOUSING 256, 261 (1967) [hereinafter cited as *Rent Withholding*].

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from several buildings under common ownership or management. Unlike previous tenant organizations, the Chicago unions sought to establish a collective bargaining agreement defining the expected conduct of landlord and tenants. By the end of the summer, the unions had negotiated six collective-bargaining-type contracts.[27] Although these new-style tenant unions had a long-term relationship with the landlord as a goal, for the most part these unions dissolved after the initial excitement of victory.[28] Some writers felt that this early dissolution might be symptomatic of all attempts at long-term tenant organization.[29] These writers suggested that union organizers carefully select those buildings which were not too dilapidated to save and in which the tenant turnover was not so great as to defeat organizational stability.[30] In addition, several important clauses for the collective bargaining agreements were suggested.[31] This critical analysis of early efforts at unionization and the accompanying discussion of the legal problems of tenant unions[32] following the Chicago experience, resulted in much better organization and more sophisticated contracts in other cities in the years following the Chicago experience.[33]

The "rent strike" idea, which had spread so rapidly after its birth in New York, was replaced by the spread of tenant unions across the country. In the first eight months of 1969 tenant unions took collective action on sixty-seven reported occasions in twenty-nine cities.[34] A majority of the tenant union activity in this same period was con-

[27]*Id.* For a detailed account of these union activities see Note, *supra* note 11. For the reaction of the Chicago landlords *see generally Rent Withholding, supra* note 26; *Now it's "Rent Strikes"*, U.S. NEWS AND WORLD REPORT, Oct. 20, 1969, 31, 32.

[28]*See* Note, *supra* note 11, at 107-108.

[29]*Id;* Grad, *supra* note 19, at 143.

[30]The suggestions were that unions gain strength and stability, establishing their legality in buildings which are financially feasible to repair; then organization and maintenance of hard core slum tenant unions would be facilitated. *E.g.*, note, *supra* note 11, at 119.

[31]*See* Coulson, *The Tenant Union - New Institution or Abrasive Failure?*, 14 PRACTICAL LAWYER 23, 28 (April, 1968); Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant, supra* note 4, at 1395.

[32]*E.g.*, Note, *supra* note 11; Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant, supra* note 4; Hillman, "Tenant Unions in the Common Law" (Paper presented at the Conference on the Landlord-Tenant Relationship, University of Chicago Law School, November 1, 1966); Glotta, *The Radical Lawyer and the Dynamics of a Rent Strike*, 26 GUILD PRACTITIONER 132 (1967).

[33]*E.g.*, the agreements signed in St. Louis Public Housing and Coronet Village, *infra* p. 7. *See also* 2 NATIONAL INSTITUTE FOR EDUCATION IN LAW AND POVERTY, HANDBOOK ON HOUSING LAW (1969) [Hereinafter cited as HANDBOOK].

[34]FLAUM & SALZMAN, *supra* note 1, at 1. Twenty-three percent of these reported occasions involved middle and upper-income groups. *Id.*

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cerned solely with maintenance and repair.[35] Because of the novelty of the tenant union and the relative lack of legal sanction there have been many failures. But at the same time there have been many victories won by tenant organizations.

1. PRIVATE HOUSING

a. Coronet Village

In September of 1967, a collective bargaining agreement signed in Harvey, Illinois climaxed a dramatically effective tenant union effort.[36] As described by Gilbert Cornfield,[37] the Coronet Village Improvement Association (CVIA) was formed among the tenants of a post war housing project in Harvey. During the 1950's the project had changed from a white community to an all black community. During this changeover period the financial troubles of the successive owners increased and the landlord services decreased. This decrease in landlord services was followed by a decrease in city services such as garbage collection and police protection. Along with this decline in maintenance and services, tenant vandalism and rent skipping increased. By the early 1960's the Federal Savings and Loan Insurance Corporation (FSLIC) was forced to take ownership of the property in order to protect the insured mortgages.[38]

By the summer of 1966 the Village was rat infested; major appliances and heating systems were completely unserviced; tenant turnover was high and substantial rent delinquencies were frequent. In short, the Village had become a slum in the classic manner. With the aid of labor union officials and tenant union organizers from Chicago, the CVIA was formed in the summer of 1966 and grew steadily throughout the following winter, culminating in concerted rent withholding in the spring and summer of 1967.

Management responded to the rent withholding by initiating eviction proceedings against the tenant leaders. The union's attorneys countered the eviction proceedings with equitable and constitutional defense suits.[39] At this point the FSLIC offered to meet directly with

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[35]*Id.* at 13.

[36]Cornfield, *Tenants Save Their Community*, 1 CIV. RIGHTS DIG. 1 (Summer 1968). As Mr. Cornfield reports the events, this is the most successful union action yet reported.

[37]Mr. Cornfield is a member of the board of the Chicago Legal Services Project, an affiliate of the NAACP Legal Defense and Educational Fund, Inc.

[38]Although the FSLIC may be called a government agency, as compared to a local public housing administration, the rights and duties of the FSLIC as a landlord are similar to those of an individual landlord.

[39]For a model answer and points and authorities for defense of an eviction for nonpayment of rent, *see* HANDBOOK, *supra* note 33, at II-6.

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the tenants rather than through the real estate firm that had been managing the property. A little over a month later the FSLIC and the CVIA had signed a collective bargaining agreement. Among other things the agreement recognized the CVIA as representative of the tenants in all matters concerning conditions of tenancy. The agreement set forth a wide range of tenant rights, including reduced and equalized rents. The duty of the tenants to maintain their units in an orderly condition was also spelled out contractually. Finally, the agreement established a grievance machinery featuring binding arbitration under the American Arbitration Association. Mr. Cornfield reports that a year after the signing of the contract, the project had completely changed. The tenant union had remained active, and the physical and social character of the project had greatly improved.[40] Of most significance is the report that rent delinquencies are now so insignificant that even with the rent deductions, physical repairs, and improvement, the net financial return to the landlord has increased.[41]

b. Other Successful Union Efforts

In Detroit in the summer of 1968, the United Tenants for Collective Action filed suit requesting a Writ of Mandamus ordering the city of Detroit to inspect a building for code violations. The suit also requested an injunction restraining the landlord from collecting rents until after repairs were made. The court complied with both requests.[42] After the city filed a thirty-five page report of code violations, the landlord promptly sold the building. The new owner came to terms with the tenant organization by signing a collective bargaining contract which provided a timetable for rehabilitation. "It also provided a grievance procedure, a 'closed shop' requiring future tenants to join the union, a dues checkoff, and provision for an escrow account for deposit of rent payments in the event the grievance procedure breaks down."[43]

Victories by the same United Tenants for Collective Action were won in suits against two other Detroit landlords. In one, a contract was signed wherein the tenant union established a managing corporation with an option to purchase.[44] In the second instance, the landlord corrected all code violations, redecorated all apartments, and agreed not to raise rents within one year. The repairs and redecorations were

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[40]Cornfield, *supra* note 36, at 3.

[41]*Id.*

[42]United Tenants for Collective Action v. Watts, No. 107703 (Wayne Co. Cir. Ct., Mich., filed April 8, 1968) cited in 1 COMMUNITY LEGAL COUNSEL REPORTER 1 (No. 2, Aug. 1968).

[43]1 COMMUNITY LEGAL COUNSEL REPORTER 2 (No. 2, Aug. 1968).

[44]*Id.*

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completed within forty-five days of the filing of suit by the tenant union.[45]

Union activity in the Boston area has also led to some success. In the summer of 1969 the South End Tenant Council, a component group of the Boston Area Congress for Tenants Rights, brought various means of concerted pressure upon a large landlord. The landlord was forced to sell fifty of his properties to the city under a plan that ultimately will place the houses under the cooperative ownership of the tenants.[46]

2. PUBLIC HOUSING

The most recent and spectacular gains have been made by tenant unions in public housing. Public housing is subsidized by the federal government and sometimes supplemented by state and municipal subsidies as well, but the projects are run by local housing authorities.[47] In November of 1968, the St. Louis Housing Authority announced a change in its rent scale that would result in increases up to nineteen dollars a month for many tenants.[48] This rent increase sparked the tenants who had been smoldering over poor maintenance and high rents. In December, tenants in the city's Carr Square Village and Vaughn housing developments organized and signed pledges to participate in a rent strike.[49] During December and January the movement spread throughout St. Louis' public housing tenants. Withholding of rents began in February. By October of 1969, approximately 1,000 of the 6,700 families in public housing had unionized and were paying rent into specified bank accounts or simply not paying it at all;[50] over $400,000 had been withheld.[51] In May the Housing Authority went to court and filed 300 rent recovery and eviction suits. The court disallowed counterclaims filed by the strikers, but the Housing Authority did not press for evictions.[52] The district court ordered that the money deposited in rent strike accounts at city banks

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[45]United Tenants for Collective Action v. Friedman, No. 111887 (Wayne Co. Cir. Ct., Mich., filed June 13, 1968) reported in 1 COMMUNITY LEGAL COUNCIL REPORTER, *supra* note 43.

[46]The Washington Post, Dec. 14, 1969, at A24, col. 1.

[47]For a general introductory outline of public housing administration see FLAUM & SALZMAN, *supra* note 1, at 41.

[48]The Washington Post, June 27, 1969, at A-6, col. 1.

[49]*Public Housing Tenants in St. Louis Have Been on Rent Strike for Six Months*, 26 J. HOUSING 351 (1969) [hereinafter cited as *Public Housing Tenants*].

[50]FLAUM & SALZMAN, *supra* note 1, at 32.

[51]*Public Housing Tenants*, *supra* note 49.

[52]The Washington Post, *supra* note 48. It appears that evictions were not pressed on such a large scale for fear of race riots in the tense atmosphere of the summer of 1969.

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be turned over to the court pending settlement of the strike. The total amount collected by the courts was reported to be $108,579.[53] After this the tenant unions used private accounts and safe deposit boxes to keep the rent payments from the courts.

In July of 1969, a special panel was established by the Department of Housing and Urban Development (HUD) to investigate the rent strike and the operation of public housing in the city. The final report of the panel[54] was highly critical of the management of the city's public housing and supportive of many of the demands of the tenant unions. The report recommended, *inter alia,* that the Executive Director of the Housing Authority be removed and a tenant affairs board (made up of tenants) be established to work with a new executive director to establish policy and handle tenant problems.

The rent strike continued, and in the fall of 1969, the executive director, William H. Schawacker, stated that the Housing Authority would be "dead flat broke by December 30."[55] This meant that on January 1, 1970, the electricity, heat, and all maintenance would be discontinued for all of St. Louis' Public Housing.

On October 29, 1969, after nine months of striking, an agreement was announced. A coalition of tenant unions and other civic organizations had been formed under the direction of Harold Gibbons, an international vice president of the Teamsters Union.[56] The agreement, signed by Mayor Alfonso J. Cervantes, contained many provisions recommended by the HUD panel, leading to greater tenant control of public housing. Among the concessions made to the Alliance were:

1) The existing board of commissioners was replaced by a new five-member board. Two of the new members are tenants.[57]

2) A tenant affairs board to be elected by public housing residents will be set up to arbitrate disputes between the Authority and individual tenants and to consider housing authority policy.[58]

3) A ceiling was set on rents so that no tenant will have to pay more than 25 per cent of his income.[59]

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[53]*Public Housing Tenants, supra* note 49.

[54]Summary of the Panel's report on file at UCD L. REV.

[55]FLAUM & SALZMAN, *supra* note 1, at 33.

[56]New York Times, Nov. 2, 1969 at 64, col. 1.

[57]*Id.*

[58]It is hoped that the T.A.B. will eventually incorporate "to qualify as a non-profit sponsor of credit unions, commercial facilities, job training programs, and various tenant services." 1 TENANTS OUTLOOK 1 (No. 8, Dec. 1969) (Published by the Nationwide Tenants Rights Program 711-14th Street, N.W., Suite 711, Washington D.C. 20005).

[59]New York Times, *supra* note 56.

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4) A program would be set up to train tenants in public housing management (hopefully these programs would be sponsored by foundations and universities) so that eventually tenant-run corporations would take over management of the individual housing projects.[60]

5) A list of physical improvements was spelled out as necessary to make public housing in the city livable.

The strikers made an accounting to the authority and turned over about $200,000.[61] In addition, some financial aid was received from HUD. But the economic recovery from the rent strike has been a slow process and is still continuing.

Recovery was set back initially when the plumbing froze in some of the buildings in January 1970. As a result of the freeze, several buildings were flooded when pipes burst. The following months were spent tightening the budget of the new Housing Authority. In February, 100 employees of the Housing Authority were terminated. In October, the Pruitt Project, the worst in the city, was closed down. In late October of 1970, the new Executive Director of the Housing Authority reported that the tenant advisory board was taking an active part in planning for the future.[62] It was also reported that a maintenance and security training program for tenants had finally begun operation with the funds provided largely by HUD. Major physical improvements have been delayed until the completion of the tenants' training program. It is anticipated that upon completion of the initial security training program, vandalism will be greatly decreased and rebuilding can begin. In 1969, the first year of existence of the resident advisory board in Baltimore's public housing, vandalism dropped by 40 per cent.[63] The long range success of St. Louis' experiment in tenant operation of the Housing Authority depends primarily upon the success of the tenant training programs.

The future of St. Louis public housing should be an indicator of the future of tenant unions. If the feasibility of tenant management on such a large scale can be proved, it will have a positive effect on the bargaining position of tenant unions across the country.

In December of 1969 the Philadelphia Housing Authority signed an agreement with the Resident Advisory Board (RAB), a tenant

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[60]*Id.*

[61]Telephone interview with Thomas Costello, Executive Director, St. Louis Housing Authority, Oct. 28, 1970. Many people stopped paying rent during the strike and just moved out when the strike was ended. Others remained and are repaying the past rent in installments. *Id.*

[62]*Id.*

[63]San Francisco Chronicle, April 26, 1970, at A28, col. 1. *See also* the account of Coronet Village in Cornfield, *supra* note 36.

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union, recognizing the RAB as representing tenants in all of Philadelphia Public Housing.[64] Negotiations between the tenant organization and the authority began after the Department of Housing and Urban Development issued a circular to all housing authorities to "undertake a mutual commitment to cooperative action [and] trust with tenant organizations in order to provide a decent home in a suitable living environment for persons of low income."[65] After nearly a year of negotiating, RAB and the Housing Authority signed a "Memorandum of Understanding" outlining the goals of the two groups. The agreement, which was finalized in December,[66] gives the tenants a major role in managing the projects, including setting of rent schedules, selection of employees, and planning physical improvements.[67] At the contract signing in December, Chairman of the Philadelphia Housing Authority, Gordon Cavenaugh, said, "During the short period of RAB's life, tenants have recommended sound and useful ideas that improve the operations of the Authority."[68]

In addition to the Department of Urban Development,[69] state legislatures have begun to recognize the legitimacy and value of tenant organizations in public housing. In 1968, Massachusetts and Michigan increased the role of tenants in the administration of public housing. In Massachusetts, Local Public Housing Authorities are now required to meet at reasonable times with tenant organizations to confer about complaints and grievances.[70] Michigan created a board of tenant affairs for every unit of local government operating a public housing project. Half of the members of each board are public housing tenants elected by their peers. The remainder are appointed by the mayor or chief executive of the local unit. Among the powers of these boards, exercised by 2/3 vote, are: a) ad-

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[64]2 TENANTS OUTLOOK 2 (No. 1, Jan. 1970).

[65]"The Social Goals for Public Housing," HUD circular No. 3-22-62 (March 15, 1968) [quotation taken from TENANTS OUTLOOK, *supra* note 64].

[66]The Public Housing Authority agreed, *inter alia*, to turn over $25,000 to aid the R.A.B. in achieving its goals. TENANTS OUTLOOK, *supra* note 64.

[67]*Now It's "Rent Strikes," supra* note 27, at 31.

[68]TENANTS OUTLOOK, *supra* note 64, at 2, col. 3. The same attitude has been expressed by Richard Van Dusen, Undersecretary of HUD: "A tenant council can be a big help to a landlord, either public or private, if he learns to get along with it . . . . There is a crying need for competent management of multifamily housing, and the tenants can help provide it." Quoted in U.S. NEWS AND WORLD REPORT, *supra* note 67, at 32.

[69]*See* "The Social Goals for Public Housing," *supra* note 65.

[70]MASS. GEN. LAWS Chap. 221, § 43 (Aug. 4, 1968), repealed 1969 and replaced (language unchanged) by Chap. 121B, § 32. The same statute also provides that public housing tenants shall not be terminated without cause and without reasons therefore given to said tenant in writing.

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vise the housing authority concerning the general welfare of the tenants of the local projects; b) review and veto rules of the local housing commission, including eligibility requirements for admission, obligations of tenants, and just cause for termination of tenancy; c) to hear and make binding determinations concerning complaints arising under decisions of the project manager or housing commission denying admission, terminating a tenancy, or altering tenants' obligations.[71]

Other state legislatures have begun to increase protection of individual tenants, in both public and private housing.[72] These new remedies and protections, however, do individual low-income tenants little good. Most do not know that they are available, and those that do know of the existence of legal protection generally do not have the funds, the perseverance, or the power to make use of them. This is where tenant unions have made their largest contribution to balancing the relative position of landlords and their tenants.

As in the labor situation, unionization gives the tenants a collective ability to assert their legal rights from a position of greater strength. Tenant unions are still a relatively young phenomenon, and are presently in a period of definition. They are attempting to define their legal position. The rest of this article is an outline of the legal problems faced by tenant unions and the treatment they are receiving in the courts and legislatures of the states.

II. LEGAL PROBLEMS FACED BY TENANT UNIONS

A. TENANTS' RIGHTS TO ORGANIZE, REPORT CODE VIOLATIONS, AND PICKET

It seems clear that tenants have a constitutionally protected right to organize into groups to further their common interests. In *Amalgamated Utility Workers v. Consolidated Edison of New York,*[73] the Supreme Court stated that the NLRA cannot properly be said to have "created" for laborers the right of self-organization or of collective bargaining by elected representatives.[74] The court further noted

[71]MICH. C. L. 1948 §§ 125.651-125.698, as amended by P.A. 1968, No. 344.
[72]*E.g.*, statutes prohibiting retaliatory evictions, *infra* notes 98-102, and statutes providing for some type of rent withholding by tenants, *infra* notes 126-131.
[73]309 U.S. 261 (1940).
[74]*Id.* at 263.

that the right of workers to organize was a fundamental right and as clear as an employer's right to organize its business and select its own officers.[75] By analogy, tenants have a fundamental right to organize into unions and a statute analagous to the NLRA is not necessary to "create" a right of organization for tenants.

The methods and strategy of organizing tenants are treated extensively elsewhere and need not be duplicated here.[76] Rather, the remainder of this article deals with actions to be taken and difficulties faced by tenant unions after they have been initially organized.

Once it is organized, a tenant union first seeks recognition by the landlord or landlords. Tenant unions in public housing should get immediate recognition from the local housing authority according to the HUD circular discussed *supra*.[77] Most private landlords, however, are still hostile to the idea of a tenant union and the union is forced to begin coercive measures to bring the landlord to the bargaining table.

The next action to be considered by a new tenant union is the reporting of housing code violations to the city agency responsible for housing code enforcement. This builds a record for future negotiations and for public support. And it is possible that the city may force the landlord to repair the violations. As indicated in the National Housing Law Project's Handbook on Housing Law, there are dangers in reporting code violations.[78] The first is that there will be too much response from the city agency. If the building is very badly dilapidated, the agency may condemn the building and order it vacated. Because of the shortage of low-cost housing, this leaves the tenants in a worse position. The second danger is that of retaliatory evictions of union leaders (discussed *infra*).[79]

If code violations are reported and there is little or no reaction from the city or the landlord, the next action to be considered by tenant unions is picketing. There are generally three places where unions picket: the apartment building itself; the landlord's residence; or the landlord's place of business. The right of tenants to picket a landlord at any of these places is again found by analogy in judicial decisions concerning labor union activities. In *Thornhill v. Ala-*

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[75]*Id.*

[76]For the most complete discussion of the organization of tenant unions, see HANDBOOK, *supra* note 33, at Chap. 1. *See also* Glotta, *supra* note 32; Coulson, *The Tenant Union-New Institution or Abrasive Failure?*, *supra* note 31.

[77]*Supra* note 65.

[78]*See* HANDBOOK, *supra* note 33, at I-40.

[79]*See* RETALIATORY EVICTIONS, *infra* p. 16.

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bama,[80] the Supreme Court declared that peaceful, primary labor union picketing is protected by the First and Fourteenth Amendments. In later cases the court, realizing that some coercion and traffic problems were involved in labor picketing, held that the states could regulate both the coercion and traffic aspects of union picketing. Nearly all picketing involves some coercion, and the states may enjoin peaceful picketing "only where the object sought by the picketers violates a legitimate, clearly defined state law or policy."[81] The courts must therefore determine whether the picketing activity is being carried out in pursuit of an unlawful purpose. Unions should be cautious to restrict their activity to informational picketing. Picketing to persuade other tenants to stop payment of rent could probably be enjoined as in pursuit of an "unlawful purpose." However, where the picketing is informational and peaceful, community action directed toward obtaining a "decent home and a suitable living environment"[82] should not be considered an unlawful purpose in light of the public policy pronouncements of the Housing Act of 1949,[83] the Economic Opportunity Act,[84] state housing statutes, and municipal housing codes. Accordingly, in *Dicta Realty Associates v Shaw*,[85] a New York supreme court denied a landlord's request for preliminary injunction against a tenant picketing in front of his apartment building. The court said that the tenant had a constitutional right to picket in a peaceful manner, that the limitations which can be placed on such picketing is a question of federal constitutional law, and that the decisions of the United States Supreme Court dealing with picketing are binding upon the state courts.[86]

Pressure has been exerted upon an absentee landlord[87] by picketing

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[80]310 U.S. 88 (1940)

[81]*Tenant Unions: Collective Bargaining and the Low-Income Tenant, supra* note 4, at 1390.

[82]The Housing Act of 1949, 42 U.S.C. § 1441.

[83]*Id.*

[84]42 U.S.C. §§2701 *et. seq.*

[85]50 Misc. 2d 267, 270 N.Y.S. 2d 342 (1966).

[86]270 N.Y.S. 2d at 344. The tenant in this case did not even have verified housing code violations to fortify his "lawful purpose" argument. In denying the injunction, the court refused to follow the reasoning of an earlier New York case, Springfield Bayside Corp v. Hockman, 44 Misc. 2d 882, 255 N.Y.S. 2d 140 (1964), in which tenants were enjoined from picketing the landlord's place of business on the theory that the rights of the tenants and the landlord were based on a contract and the tenants had an adequate remedy at law.

[87]The "absentee professional landlord" is described as the large-scale slum specialist and the principal target of tenant union organizers. Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant, supra* note 4, at 1381-1382. *See also* G. STERNLIEB, THE TENEMENT LANDLORD 137-141 (1st ed. 1966).

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at his residence.[88] Residential picketing has uniformly been declared unlawful in the case of labor unions picketing the homes of employers as an invasion of privacy, and in many cases is proscribed by state statute.[89] Civil rights marches and picketing at homes of public officials have also been enjoined by the courts.[90] But picketing of the residence of an absentee landlord may receive different treatment by the courts. In *Hibbs v Neighborhood Organization to Rejuvenate Tenant Housing (North),*[91] the Supreme Court of Pennsylvania overturned an injunction against tenants picketing the residence of an absentee landlord. The landlord had been using a false name, and business was conducted with his low-income units in Philadelphia by way of a post office box to which tenants mailed their rent and grieveances. The court held that because of the surreptitious manner in which the landlord conducted his business, his residence was not an unreasonable situs for informational picketing. In a concurring opinion, Justice Roberts noted that the majority opinion held that residential picketing is permissible where no other alternative is available, but that it "should *not* be read as authority for the converse proposition, i.e., that residential picketing may be enjoined merely if another non-residential picketing situs can be effectively utilized."[92] Picketing of the homes of absentee landlords may become a more common and effective means for tenant unions to force unwilling landlords to the bargaining table. There will undoubtedly be more litigation in this area, but the *Dicta Realty* case and the *Hibbs* case are an indication that the courts no longer look upon tenant union activity with the disfavor that was manifest in the 1930's.[93]

B. RETALIATORY EVICTIONS

The major obstacle faced by new tenant unions is retaliatory evictions. There are two types of retaliatory evictions.[94] In one instance,

[88]HANDBOOK, *supra* note 33, at I-41.

[89]*See* Kamin, *Residential Picketing and the First Amendment,* 61 NW. U. L. REV. 177 (1966).

[90]*Id.*

[91]433 Pa. 578, 252 A2d 622 (1969).

[92]*Id.* 252 A2d at 624 (emphasis in original).

[93]*Supra* note 16.

[94]Some writers have classed eviction for withholding of rent in a strike as retaliatory eviction. *E.g.,* McElhaney, *Retaliatory Evictions: Landlords, Tenants and Law Reform,* 29 MD. L. REV. 193 (1969). It is more appropriate to limit the term retaliatory eviction to evictions of tenants organizing and reporting violations, but who are still paying their rent, because retaliation carries the connotation of being unlawful. Eviction for nonpayment of rent is hardly unlawful in the great majority of cases.

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a few tenants (most often with the help of a community organization) begin to organize the other tenants in the building or to inform other tenants of their rights. The landlord hears of these activities, and the organizers receive notice of eviction. The second type of retaliatory eviction occurs after a tenant or group of tenants complains to a local agency of housing code violations in their building, and shortly thereafter receive notices of eviction. Although both of these types of evictions seem blatantly inequitable, the practice is common, as evidenced by the cases discussed *infra.*

In most cases where retaliatory eviction occurs, the tenants do not have a written lease and have only a month-to-month tenancy. Under the common law right of summary possession, the landlord may give the statutory notice and evict a complaining tenant without cause.[95] With the advent of extensive housing codes,[96] congressional commitment to cleaning up substandard housing,[97] and the critical shortage of low-income housing, the ability of a landlord in the common law to evict tenants for taking legally sanctioned steps to improve their living conditions has become anachronistic.

Accordingly, a few states have recently enacted statutes prohibiting retaliatory eviction. Illinois has declared it to be against public policy for a landlord to "terminate or refuse to renew a lease or tenancy of property used as a residence on the ground that the tenant has complained to any governmental authority of a bona fide violation of any applicable building code, health ordinance, or similar regulation."[98] Rhode Island and Michigan allow a tenant-defendant, in an action based upon termination of a lease, the defense that the alleged termination was intended as a penalty for the tenant reporting a violation of any health or safety code, or any ordinance.[99] Maryland has provided that retaliatory action will be stayed for a period of six months after a tenant has reported a major defect in the premises.[100] California's new Civil Code section 1942.5 states that a landlord, whose dominant purpose is retaliation against a lessee for complain-

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[95]*See e.g.,* CAL. CODE OF CIV. PRO. § 1166a (West 1955). *See also* Blum v. Robertson, 24 Cal. 127 (1864); Note, *Retaliatory Eviction - Is California Lagging Behind?,* 18 HASTINGS L. J. 700, 702 (1967).

[96]*Supra* note 3.

[97]The Housing Act of 1949, 42 U.S.C. § 1441.

[98]ILL. S.H.A. ch. 80, § 71 (1966).

[99]GEN. LAWS OF R.I. § 34-20-10 (1969); MICH. LAWS ANN. 8600.5646 (1968). See Oliver v. Sweeney (Mich. Cir. Ct. Opinion issued June 8, 1970) reported in CLEARINGHOUSE REVIEW, Aug.-Sept. 1970, at 219.

[100]MD. LAWS 681, Ch. 223, §§ 1(b) (1) and (2) (1969). For a comprehensive discussion of the new Maryland statutes and their weaknesses, *see* McElhaney, *supra* note 94.

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ing to a government agency or for exercising other rights conferred on him by Title 4, Chapter 2 of the Civil Code, "may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services, within 60 days . . . ."[101] New Jersey provides for criminal punishment of any landlord who takes reprisals against a tenant for reporting violations of any health or building code.[102] Following the intent of this criminal statute, a New Jersey District Court in the case of *Alexander Hamilton Savings and Loan Association v. Whaley* ruled that the landlord was not entitled to possession in an eviction action because the action was taken in retaliation for the tenant's organizing activities and reporting of housing code violations.[103]

The question of whether a defense of retaliatory eviction will be allowed in an action for possession has in recent years become an issue before several courts in states lacking statutory guidelines. The first and most discussed case in which the defense of retaliatory eviction was allowed is *Edwards v Habib.*[104] The facts as stated by the court are:

> In March 1965 the appellant, Mrs. Yvonne Edwards, rented housing property from the appellee, Nathan Habib, on a month-to-month basis. Shortly thereafter she complained to the Department of Licenses and Inspections of sanitary code violations which her landlord had failed to remedy. In the course of the ensuing inspection, more than 40 such violations were discovered which the Department ordered the landlord to correct. Habib then gave Mrs. Edwards a 30-day statutory notice[105] to vacate and obtained a default judgment for possession of the premises. Mrs. Edwards promptly moved to reopen this judgment, alleging excusable neglect for the default and also alleging as a defense that the notice to quit was given in retaliation for her complaints to the housing authorities. Judge Green, sitting on motions in the Court of General Sessions, set aside the default judgment and, . . . concluded that a retaliatory motive, if proved, would constitute a defense to the action for possession. At the trial itself, however, a different judge apparently deemed evidence of retaliatory motive irrelevant and directed a verdict for the landlord.[106] [some footnotes omitted and others renumbered]

[101]CAL. CIV. CODE § 1942.5 (West 1971). For a critical analysis of the new California law *see* Article, *California's New Legislation On A Landlord's Duty To Repair,* 3 U.C.D. L. REV. 131.

[102]N.J. STAT. ANN. § 2A: 170-92.1(1967). *See* State v. Field 107 N.J. Super. 107, 257 A2d 127 (1969), in which the Appellate Division of the New Jersey Superior Court upheld a fine imposed upon a landlord under this statute.

[103]N.J. Dist. Ct., Hudson Cty. (Sept. 1969). Reported in CLEARINGHOUSE REVIEW, Dec. 1969, at 201.

[104]397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969).

[105]45 D.C. CODE § 902 (1967).

[106]397 F.2d 687, 688-689 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969).

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The District of Columbia Court of Appeals affirmed the judgment of the trial court, refusing to allow the defense without statutory authority.[107] In an opinion written by Judge Skelly Wright, the U.S. Court of Appeals, District of Columbia Circuit, reversed, holding that retaliatory eviction was an allowable defense to an action for possession.[108]

Three arguments were advanced for making such a judgment. The first argument was that to permit retaliatory eviction would contravene the tenant's First Amendment right to petition the government for a redress of grievances. The required "state action" would come from the state legislature and courts affording a means to the landlord to evict the tenant because of his exercize of First Amendment rights.[109] The second argument is that the eviction would be unconstitutional even if the use of courts would not constitute "state action," because the right to petition the government and to report violations of law is constitutionally protected against private as well as governmental interference. The court seemed inclined to accept both of these arguments that would lead to a decision that state courts are constitutionally required to allow evidence of retaliatory motive as a defense to actions for possession. The court, however, following the practice of deciding cases on other than constitutional grounds when possible, accepted the third argument of appellant—to permit retaliatory evictions would be contrary to the legislative intent behind the D.C. Housing Codes and would be contrary to public policy. The court held that:

> To permit retaliatory evictions . . . would clearly frustrate the effectiveness of the housing code as a means of upgrading the quality of housing in Washington . . . . There can be no doubt that the slum dweller, even though his home be marred by housing code violations, will pause long before he complains of them if he fears eviction as a consequence . . . . The notion that the effectiveness of remedial legislation will be inhibited if those reporting violations of it can legally be intimidated is so fundamental that a presumption against the legality of such intimidation can be inferred as inherent in the legislation even if it is not expressed in the statute itself.[110]

[107]227 A.2d 388 (1967). Mrs. Edwards had received a stay of execution from the U.S. Court of Appeal, D.C. Cir., pending her appeal. 125 U.S. App. D.C. 49, 366 F.2d 628 (1965).

[108]397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969).

[109]In Shelley v. Kraemer, 334 U.S. 1 (1948), the Supreme Court declared that it would be improper "state action" for a court to enforce a covenant restricting residential property to whites only.

[110]397 F.2d 687 (D.C. Cir.), *cert. denied*, 393 U.S. 1016 (1969).

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The United States Supreme Court denied certeriori.[111]

In *Dickhut v. Norton,*[112] the Supreme Court of Wisconsin declared that a landlord may not terminate a month-to-month tenancy "simply because his tenant has reported an actual housing code violation as a means of retaliation."[113] The Wisconsin court also avoided the constitutional questions deciding that retaliatory evictions are contrary to public policy as evidenced by Wisconsin's Urban Renewal Act.[114]

In *Schweiger v Superior Court,*[115] the Supreme Court of California declared that a tenant may assert a defense of retaliation in an unlawful detainer action where the tenant refused to pay a rent increase demanded by the landlord after the tenant had asserted his rights under California's repair-and-deduct statute.[116] In this case the tenant requested, persuant to the above statute, that the landlord repair two long-standing dilapidations in the premises. The landlord responded by informing the tenant that his rent would be increased from $75 to $125. The highest rent paid in the building had been $90. Upon the landlord's suit in unlawful detainer, the tenant attempted to assert the defense of retaliation for exercise of his statutory right. Following the policy expressed in the *Edwards* case, the supreme court declared that to allow eviction or rent increase merely because a tenant had exercized his statutory rights would be contrary to the public policy expressed in the statute which authorized such tenant action.

In *Hosey v. Club Van Courtlandt,*[117] the United States District Court for the Southern District of New York, although not deciding the case on this point, concluded that an eviction ordered by a state court in an action begun to retaliate against a tenant for organizing tenants and reporting code violations would be a violation of the

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[111]393 U.S. 1016 (1969).

[112]45 Wisc.2d 389, 173 N.W.2d 297 (1970).

[113]*Id.* at 302.

[114]WISC. STAT. ANN. § 66.435 (West 1965).

[115]3 Cal.3d 507, 90 Cal. Rptr. 729 (1970).

[116]CAL. CIV. CODE, §§ 1941, 1942. This case was decided before the effective date of the amendments to these sections, *supra* note 101. A discussion of the effect of this case in relation to the amended sections is found in Article, *supra* note 101.

In Wilkins v. Tebbetts, 216 So.2d 477 (1968), *cert. dismissed* (sic) without opinion 222 So.2d 753, (1969) the Florida Court of Appeals also accepted the rationale of the *Edwards* case. In an unlawful detainer action the tenant failed, however, to plead a specific code violation. Because of this deficiency in the record, the defense of retaliatory eviction failed. The court indicated that if this defect were not present, retaliatory eviction would be allowed as an equitable defense. Chief Judge Charles Caroll dissented, saying that *Edwards* should be followed despite the deficiency in the present record.

[117]299 F. Supp. 501 (S.D.N.Y. 1969).

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First and Fourteenth Amendments. The facts in this case are particularly pertinent to the problems faced by tenant unions. Andrew Hosey was a week-to-week tenant in a residential hotel for over two years. During this time he had encouraged other tenants to try to get the landlord to make repairs and had filed complaints with city officials. On August 21, 1968 after a notice had been circulated, a meeting was held in Hosey's room to discuss conditions in the building and to consider making complaints. The following day, Hosey was informed by a hotel employee that his rent would be raised. Within the week, he received a letter from the hotel manager that his room had been reserved for someone else beginning a week after this notice. Hosey sought to have the New York Supreme Court enjoin eviction; his motion for temporary injunction was denied. Hosey did not move out, and on October 25 he received a formal notice of eviction to vacate the room by November 4 or the landlord would institute summary proceedings to dispossess him.[118] Hosey then sought an injunction in the United States District Court for the Southern District of New York. The court denied the requested injunction on the grounds that it was unsettled in New York whether retaliation is a defense to a holdover proceeding and it was therefore not clear that plaintiff's constitutional rights would be breached in the state court.[119]

One of the conclusions of the court was that "an eviction ordered by a state court in an action begun to retaliate against a tenant for exercizing his rights of speech and assembly to remedy building and health code violations in his building would be a violation of the 14th amendment."[120] This holding could be used as authority for the argument that where state law clearly precludes retaliation as a defense to actions for possession, federal courts may be used to enjoin such evictions.[121]

The majority of states have not yet ruled on the question of whether retaliation will be allowed as a defense. In the recent case of *Motoda v. Donohoe,*[122] the Court of Appeals of Washington ruled that retaliation cannot be raised as a defense to an action for unlawful detainer. Most of the cases in which retaliation is allowed as a defense have left unanswered the question of what burden the tenant will have in

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[118]These facts are taken from the opinion of the U.S. District Court for the Southern District of New York, 299 F.Supp. at 502.

[119]299 F.Supp. 501 (S.D.N.Y. 1969).

[120]*Id.* at 508.

[121]*See* HANDBOOK, *supra* note 33, at III-6.

[122]1 Wash. App. 174, 459 P.2d 654 (1969).

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order to raise a successful defense.[123]

In *Dickhut v. Norton, supra,* the Wisconsin Supreme Court stated that to be successful with a defense of retaliatory eviction, the tenant must "prove by evidence that is clear and convincing that a condition existed which in fact did violate the housing code, that the plaintiff-landlord knew that the tenant reported the condition to the enforcement authorities, and that the landlord, *for the sole purpose* of retaliation, sought to terminate the tenancy."[124] (emphasis added)

In those states lacking statutory prohibition of retaliatory eviction,[125] it is likely that the tenant will have a heavy burden of proof and that only the most obvious cases of retaliation will be stopped. A landlord evicting tenants, with the proper notice, need not fear that his action will be blocked, unless it is obvious that the action is being taken to remove tenants who are exercising their right to organize or to petition government for a redress of grievances.

C. RENT STRIKE

With the recent growth in tenant activism and the birth of tenant unions, the notion that a tenant need not pay rent if his apartment is uninhabitable has received increasing support in several state courts and legislatures. New York,[126] Rhode Island,[127] Pennsylvania,[128] Michigan,[129] Massachusetts,[130] and Maryland[131] have in recent years recognized, to some extent, the tenant's right to with-

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[123]For a discussion of what the burden of proof might be in terms of labor union cases, *see* HANDBOOK, *supra* note 33, at III-8-11. For a California Superior Court case in which a temporary restraining order was granted preventing a retaliatory eviction, *see* Rose v. Hewes Co., reported in CLEARINGHOUSE REVIEW, Oct. 1969, at 142. The settlement agreement is reported in CLEARINGHOUSE REVIEW, Nov. 1969, at 175, and in HANDBOOK, *supra* note 33, at III-34. The complaint in this case can be found in HANDBOOK, *supra* note 33, at III-12.

[124]Dickhut v. Norton, 173 N.W.2d 297, 303 (1970).

[125]CAL. CIV. CODE § 1942.5 (West 1971) shifts the burden of proof to the landlord for actions take by the landlord within 60 days of the tenant's action.

[126]N. Y. REAL PROP. ACTIONS AND PROCEEDINGS LAW §755 (McKinney's, 1963); N. Y. REAL PROP. ACTIONS AND PROCEEDINGS LAW, Art. 7-A (McKinney's Supp., 1968). *See* Grad, *supra* note 19, at Ch. 15; Note, *Tenant Rent Strikes,* 3 COLUM. J. OF LAW AND SOC. PROBS. 1, 6-16 (1967).

[127]R.I. GEN. LAWS ANN. §45-24.2-11 (Supp. 1968).

[128]PA. STAT. ANN. Tit. 35, 1700-1 (Supp. 1969).

[129]MICH. COMP. LAWS ANN. §§125.530, 125.534 (Supp. 1969).

[130]MASS. GEN. LAWS ANN., Ch. 111, §§127F, 127H (Supp. 1969).

[131]Ch. 459, MD. LAWS 832 (1968) [Baltimore City Public Local Laws, § 459A (1949 ed.)]. This statute applies only to the city of Baltimore. *See* McElhaney, supra note 94.

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hold rent from the landlord. Most of these statutes require a procedure in which rent payments are placed in escrow or are paid into the court.[132] In addition, New York,[133] Illinois,[134] and Michigan[135] have statutes which allow welfare agencies to withhold payments designated for rent payment in cases of substantial housing code violations. However, in most jurisdictions, tenants have no legal sanction for a rent strike as a means of forcing a reluctant landlord to either repair the conditions of the premises or to come to the bargaining table to work out an agreement with the tenant union.

Generally, a rent strike is analogous to a labor strike.[136] The similarity lies in the basic purpose. Each is a drastic action used by the respective union to put economic pressure upon the employer/landlord to force him to improve the working/living conditions of the union members. In each case, the success of the effort depends largely upon the organization and maximum participation of the union members. Both an employer and a landlord are under maximum pressure when a majority of his employees/tenants are participating in the strike. In a major labor strike, especially in public utilities, the public feels the effects of the strike and the pressure upon the employer is heightened. If the condition of the tenants' housing is especially obnoxious, and the union publicizes the condition, the resultant political pressure upon the landlord may be equally increased. Here the analogy between labor strikes and rent strikes breaks down because rent strikes are more liable to be misused. Laborers were reluctant to strike because of the loss of wages, and resorted to a strike only as an extreme measure.[137] Not paying rent is much more enjoyable, and in cases in which the union establishes a bank account to receive strikers rent money, there is a great temptation not to use it. A striking employee risks losing his income, while a tenant participating in a successful rent strike does not give up his apartment.

It is in the rent strike action that tenant unions have the least law in their support. Because the covenants of a lease have traditionally been considered independent, any failure of performance by the landlord short of constructive eviction, which requires vacating the prem-

[132]*E.g.*, N. Y. REAL PROP. ACTIONS LAW § 776 (b) (McKinney's Supp. 1970) which provides that upon judgment for the tenants, all rents due "shall be deposited with the clerk of the court; (2) any rents to become due in the future . . . shall be deposited with such clerk as they fall due. . . ."

[133]N. Y. SOC. WELF. LAW, 143-b (McKinney's 1966).

[134]ILL. ANN. STAT., Ch. 23 § 11-23 (Smith-Hurd, 1968).

[135]MICH. COMP. LAWS ANN., § 400.14C (Supp. 1969).

[136]The analogy is being drawn between rent strikes and the early labor strikes—before labor strikes were sanctioned by legislation.

[137]*See* C. DANKERT, *supra* note 5, at 386.

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ises,[138] does not relieve the tenant of the duty to pay rent. Tenants participating in a rent strike are therefore vulnerable to eviction. Tenant union lawyers and legal services attorneys are presently attempting to create new theories and modify common law theories to allow tenants defenses to eviction where the tenants have stopped payment of rent to the landlord because of the existence of housing codes violations.[139] Among these theories is constructive eviction. The common law has always required that the tenant vacate the premises before he may stop paying rent.[140] But those pressing this defense cite several instances in which the requirement has been relaxed,[141] and urge that the courts take into consideration the slum problems and the low vacancy rate. A New York Municipal Court allowed the defense of constructive eviction without vacation of the premises on the ground that the housing shortage existing at the time made the vacation requirement anachronistic and unnecessary.[142]

Another defense being urged upon the courts is failure of consideration. It is argued that the landlord's statutory duty to obey the housing codes is also a contractual duty to the tenant, and that the tenant's obligation to pay rent is dependent upon the landlord's performance of his duty.[143]

A third theory that has gained some acceptance is the illegal contract theory. The landlord knew that the premises were in violation of the city and state housing codes when the lease was entered into. Assuming that the existence of the codes reflects a public policy of not leasing substandard dwellings, the contract is illegal and the tenant owes no rent under it. Relying upon a D.C. Housing Regulation[144] which expressed the policy that it is unlawful to lease a dwelling unless it is in a clean, safe, and sanitary condition, the District of Columbia Court of Appeals accepted this theory in *Brown v. Southall Realty Company.*[145] This holding has been restricted to cases in which the tenant can prove that the substantial housing viola-

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[138] 52 C.J.S. *Landlord and Tenant* § 457 (1968).

[139] *E.g. see* HANDBOOK, *supra* note 33, at Ch. 2. *See also* Note, *The Failure of a Landlord to Comply with Housing Code Regulations as a Defense to the Non-payment of Rent,* 21 BAYLOR L. REV. 372 (1969).

[140] *Supra,* note 138.

[141] *E.g.,* Majen Realty Corp. v. Glotzer, 61 N.Y.S.2d 195 (Mun. Ct., N.Y. 1946); Johnson v. Pemberton, 97 N.Y.S.2d 153 (Mun. Ct., N.Y., 1950), cited in HANDBOOK, *supra* note 33, at II-34-35.

[142] Johnson v. Pemberton 97 N.Y.S.2d 153 (Mun. Ct., N.Y., 1950).

[143] *See* HANDBOOK, *supra* note 33, at II-19.

[144] D.C. HOUSING REG. § 2304.

[145] 237 A2d 834 (1968), *cert. denied* 393 U.S. 1018 (1969), *See also,* Diamond Housing Corp. v. Robinson, 257 A2d 492 (1969).

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tions existed before the tenancy was created.[146]

The theory of implied warranty of habitability was adopted by the United States Court of Appeals, District of Columbia Circuit, in *Javins v. First National Realty Corporation.*[147] The case involves an action by a landlord for possession due to nonpayment of rent. The tenants admitted to the nonpayment of rent, but offered to prove that there were approximately 1,500 violations of the District of Columbia Housing Regulations in the apartment complex. The tenants argued that these violations constituted a breach of warranty of habitability and relieved them of the duty to pay rent. The court ruled in favor of the defendant tenants stating:

> In our judgment the trend toward treating leases as contracts is wise and well considered. Our holding in this case reflects a belief that leases of urban dwelling units should be interpreted and construed like any other contract.[148] (footnotes omitted)

The court stressed the differences between the landlord-tenant relationship as it existed in the early common law, and the landlord-tenant relationship as it exists today. The court concluded that leases of urban dwellings should be governed by the law of contracts, including an implied warranty of habitability that is not subject to waiver. "Under contract principles . . . the tenant's obligation to pay rent is dependent upon the landlord's performance of his obligations, including his warranty to maintain the premises in habitable condition."[149] If the tenant can prove that housing code violations exist, he is not subject to an action for possession for nonpayment of rent so long as the violations existed.

At present, however, the great majority of jurisdictions will not condone the withholding of rent without statutory authority.[150] Where a single tenant or a small group of tenants resort to rent withholding, the result is predictable—they are evicted and out in the street in a few weeks.[151] Some states allow equitable defenses to be heard in ejectment cases and often a tenant may request a jury trial. These procedures, and appeal, can often drag the proceedings on for a few months. Real economic pressure, however, can only be exerted by a well organized union. Returning to the labor analogy, economic power cannot be exerted by a single worker, or a small minority of

[146] Saunders v. First Nat'l Realty Corp., 245 A2d 836 (1968).

[147] 428 F.2d 1071 (D.C. Cir. 1970).

[148] *Id.* at 1075.

[149] *Id.* at 1082.

[150] C.J.S. *Landlord and Tenant* § 737 (1968).

[151] *See* FLAUM & SALZMAN, *supra* note 1, at 27.

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an employer's workers. As in labor, the power of a tenant union lies in its percentage of participation and its discipline. It takes courage to risk eviction, but ones courage is increased proportionately to the number of fellow tenants taking the same risk. The law says that a landlord may evict his tenants, but the law often works slowly. Here is where a strong tenant union finds its leverage. In a not unusual case a landlord finds that 60 of his 100 tenants (or 15 of his 24) stop paying their rent to him but rather put it into a special bank account. The landlord immediately faces economic problems. Assuming that he can, without delay, evict the tenants who are no longer paying rent, and disregarding the social and political consequences of forcibly evicting 60 families, the economic burden upon the landlord is no inconsiderable problem. Court fees, loss of time between tenants, and other expenses,[152] often run into several hundred dollars per eviction. Dugald Gillies, Legislative Representative of the California Real Estate Association, referring to the costs of eviction, states:

> The interruption in tenancy and the rather substantial costs which are incurred are resorted to by the landlord with extreme reluctance . . . . [T]here are many landlords today who literally will make a cash payment to the tenant—perhaps $50 or $75 to vacate the premises after they have defaulted on rent, to avoid the unproductive costs attendant to an eviction proceeding and the loss of time involved which produces a vital loss in . . . income. . . .[153]

Even speedy evictions of 40 percent of ones tenants would be a drastic step for most landlords.[154]

Once the landlord institutes eviction proceedings, tenants, through legal services provided or referred by the union,[155] can drag the proceedings out with varying degrees of effectiveness for several months. This is done by seeking extension of the time to answer, filing legal and equitable defenses where allowed, requesting a jury trial where permitted, and appealing adverse decisions. With the increasing activity of legal services attorneys in this field, the expense to the

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[152]*E.g.,* attorney's fees, bonds, and inventory and storage costs for personal possessions left behind by the tenants. CAL. CIV. CODE §§1861-1861a requires the landlord to store the property for 60 days before it can be sold. Dugald Gillies, Legislative Representative for the California Real Estate Association, states that sheriffs usually charge the landlord $100 per room for inventory. Statement to the Cal. Comm. on Urban Affairs and Housing, Sacramento, Dec. 2, 1969 at 8.

[153]Statement to the Cal. Comm. on Urban Affairs and Housing, Sacramento, Dec. 2, 1969 at 8-9.

[154]Many landlords have evicted the leaders of the strike, which often caused the early strikes to collapse. However, the better organized unions maintain their position with the help of community service groups and legal services attorneys.

[155]*See* Note, *Tenant Unions: Legal Rights of Members,* 18 CLEV. MAR. L. REV. 358 (1969).

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tenants is often negligible. If the union is well disciplined, the funds put into the strikers' bank account will be increasing, and the landlord, with the expenses of eviction proceedings added to the loss of income, will be much more inclined to listen to what the tenant union has to offer. Realizing that the deposited funds will be released, the landlord is in many instances forced by economic necessity to negotiate a settlement with the tenant union. To the tenants, this is the ideal result of a strike by a tenant union. There are of course, many cases where union efforts result in failure,[156] but an increasing number of strikes have resulted in a collective bargaining contract between the landlord and the tenant union. With every successful tenant union, landlords may be more easily convinced of the advantages of having an active tenant union to help maintain his premises and to deal with the union rather than the individual tenants.

D. INJUNCTIONS AGAINST STRIKERS

In the early labor strikes the major weapon used by employers to combat strikes was the injunction.[157] It appears that this procedure will not be effectively used against tenant strikes because landlords have an adequate legal remedy in eviction proceedings, and in the case where rent is being payed into a central bank account, there is no "irreparable harm."[158] In addition, in later labor cases, the courts often cited the comparative bargaining power of the parties as a reason for not issuing injunctions against union activities.[159]

In *Dorfman v. Boozer,*[160] the United States Court of Appeals for the District of Columbia Circuit reversed a preliminary injunction issued by the District of Columbia Court of Appeals against tenants paying their rent into an escrow account. The tenants were officers of the Trenton Terrace Tenants Council which had been formed to negotiate with apartment landlords about matters affecting tenants. After the Department of Licenses and Inspections cited (pursuant to complaints by the tenant union) numerous violations of the housing regulations, some of the tenants began paying their rent into the Anacosta Southeast Federal Credit Union. After several months, the landlord (Tenth Street Limited Partnership) filed suit seeking

[156]*See, e.g.*, FLAUM & SALZMAN, *supra* note 1, at 27.

[157]*See* C. GREGORY, *supra* note 13, at Chap. IV.

[158]Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant, supra* note 4, at 1394. *See also* Hillman, *supra* note 32.

[159]*E.g.*, Scofes v. Helmar 205 Ind. 596, 187 N.E. 662 (1933), quoted in Hillman, *supra* note 32, at 8.

[160]414 F.2d 1168 (D.C. Cir. 1969).

an accounting of the funds paid into the credit union, which at this time amounted to $40,000, and requested preliminary and permanent injunctions against the tenants, enjoining them from putting rent into the credit union account and ordering the funds in the account paid over to the court for disbursement to the landlord for operating expenses. The landlord argued that because of the rent strike it was without funds to operate the apartment and would suffer irreparable harm if the trust holder foreclosed. In addition, the landlord filed eviction suits in the District of Columbia Court of General Sessions against nine of the tenants. The court held that the preliminary injunction should not have been issued. "We find that there is a comprehensive statutory scheme for landlord and tenant actions . . . . An examination of the District of Columbia Code shows that a landlord has available a full panoply of legal remedies . . ." to obtain rent claimed to be owed to him under a lease contract.[161] In addition, the landlord may bring an action for ejectment or an action to recover possession. The court concluded, saying, "The struggle here between the rent strikers and the landlord involves a variety of closely balanced legal and tactical approaches; the preliminary injunction quickly and unwarrantedly destroyed that balance. The landlord's remedy at law is obvious and adequate."[162] All jurisdictions have adequate legal actions of eviction, unlawful detainer, etc. The reasoning of the court would therefore seem to be applicable in all states. Rent strikes may not be stopped by injunction; landlords must use the statutory remedies available to stop a rent strike.

As noted *supra,*[163] several of the first collective bargaining contracts signed in Chicago in 1966 lost their effectiveness when the tenant organization crumbled after the excitement of victory had died down. These were the first of their kind, and several of them were written without legal advice.[164] Since these early efforts, there have been many improvements, with most of the legal theories taken from the labor context. There are now several model agreements which appear to eliminate most of the problems of the early contracts.[165] But it is still too early to assess the effectiveness and durability of these more sophisticated agreements. The next few years should bring several "new" collective bargaining contracts before the scrutiny

[161] *Id.* at 1171.

[162] *Id.* at 1174.

[163] Note, *supra* note 11.

[164] *Id.* at 107.

[165] *See, e.g.,* HANDBOOK, *supra* note 33, at I-50; Note, *supra* note 11, at 141; Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant, supra* note 4, at 1395.

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of the courts. Some of the problems to be faced by the unions are the right of the union to represent nonmember tenants, the landlord's claim of duress, and the question of consideration passing from the union to the landlord. Each of these problems is discussed fully elsewhere,[166] and one receives the impression that courts will lean toward validating reasonable collective bargaining contracts signed by a landlord and backed by a strong, viable tenant union.

III. CONCLUSION

Throughout this article emphasis has been on the successes of the tenant union movement while briefly referring to the failures and disadvantageous consequences. But in the growth of a new phenomenon, failures are often commonplace. The remarkable aspects of the growth of tenant unions are the successes achieved and the possibilities for the future.

There is one side effect of the growth of tenant power that cannot be ignored. Although many absentee-professional landlords are making large profit by letting their buildings deteriorate, many landlords are in the position of not being able to afford to repair run-down buildings. And in most cases it is becoming impossible to get mortgage money in low-income rental property.[167] As a result, many owners are simply abandoning their buildings. This has become an especially serious problem in New York City where rigorous code enforcement has already caused owners to board up over 2,500 buildings.[168] Owners appear to simply "want out" of the business in the face of increasing risks, unfavorable publicity, and reduced potential for capital gain.[169] In many instances, tenant activism has been considered by owners as the final blow which forces them to board up their buildings. This puts the tenants in a worse position and adds to the shortage of low-income housing. There have been instances in which a tenant union has reversed the decline of substandard housing and increased its profitability,[170] but many of the dilapidated build-

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[166]*See* Comment, *Tenant Unions: Collective Bargaining and the Low-Income Tenant, supra* note 4, at 1396-1399; Note, *supra* note 11, at 134-140; Grad, *supra* note 19, at 142-144.

[167]THE PRESIDENT'S COMMITTEE ON URBAN HOUSING - A DECENT HOME 23 (1968).

[168]REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 472 (1968).

[169]Krumholz, *supra* note 9, at 245.

[170]*E.g.*, "Coronet Village" p. 7 *supra*.

ings which are the target of tenant activity are economically beyond repair, and landlords are forced to board them up rather than repair them.

The newly founded National Tenants Organization[171] is putting most of its efforts into organizing tenants in public housing where the "landlord" has become more receptive to tenant participation in management. The "law" of tenant unions should mature in public housing. The future of tenant union activity will depend upon the experience of tenant unions in St. Louis' public housing and in others across the country. The movement should then progress more successfully into private rental housing where tenants can point to the economic and social feasibility of strong, active tenant unions in public housing. It is also anticipated that union activity will concentrate more on tenant management of rental property. It is possible that the tenant union movement is a prelude to widespread growth of tenant cooperatives. Despite these possible gains, tenant unions are not *the answer* to this country's housing problems. But, if there is a solution, tenant organization will be part of it. Tenants' rights are in the process of expansion. Tenant unions have been active in bringing about this expansion, and are becoming vehicles for enforcement of those expanded rights.

To complete this discussion, a note of caution is necessary. Tenants have rapidly been gaining strength in their fight for a more balanced bargaining position, but their position is still weak. Much of their hope for the future still depends upon public opinion, and abuse of their strength in the form of radical and violent action will do the movement much harm. Attempts to gain further legislative sanction for tenant self-help measures[172] will be thwarted by adverse reaction to radical tenant activism.

Richard H. Caulfield

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[171]The National Tenants Organization was founded in 1969. The Director is Anthony Henry, a leader of the tenant union movement since its inception in 1966. The Address is 711-14th Street, N.W. Washington, D.C. 20005.

[172]Notes 126-131 *supra.*

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