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Habitability Claims Prevention

A landlord is required to provide a safe and habitable residence under the warranty of habitability. By renting a property, a landlord warrants that it is fit for human use as a residence. A landlord breaches the warranty of habitability if a property is deemed uninhabitable; the property is in a condition that poses a danger to the tenant's life, health, or safety; or the landlord has received written notice of the uninhabitable, unfit, or dangerous conditions and failed to cure them within a reasonable time. Examples of conditions rendering a property uninhabitable include: pest infestations or mold; inoperable or defective electrical, heating, plumbing, or gas facilities; improper or inadequate water, garbage, and sewage disposal systems; improper light, ventilation and heat; disrepair of floors, stairways, and railings; broken or absent safety locks or security gates; a violation of applicable building, housing, and health codes; and even a persistent bad smell or noise. If a landlord receives notice of an uninhabitable condition, it must cure the defect or dangerous condition within a reasonable time.

Landlords and property managers may see more claims from tenants regarding the alleged uninhabitable condition of a property when a tenant is pursued for unpaid rent or any other basis for eviction. Claiming uninhabitability is one way a tenant may withhold rent or terminate a lease. Below are some recommended steps to take to prevent and respond to habitability claims:

- If you are a landlord or property manager, review the lease to determine whether the landlord, property manager, or tenant bears the responsibility of maintaining and repairing the property.
- If the responsibility is the landlord or property manager's and you are aware of a dangerous condition in the property, advise your tenants in writing what conditions are known to need repair or replacement and what steps will be taken and when to remedy those conditions. Once a dangerous condition or defect has been cured, advise the tenant in writing and keep a copy for your records.
- If you are a landlord or property manager, and the lease allows for occasional, reasonable inspections, and you are made aware of a dangerous condition in the property, request a time that the tenant may grant you or a technician to access the property to investigate and cure the alleged defect.
- If a tenant refuses to allow technicians to enter a property to repair or replace an unsafe condition, the tenant should be provided a copy of the lease agreement that includes a provision regarding access to the property and the tenant's obligation to allow the landlord to repair safety issues and damage to the property.

- If you are a landlord or property manager and you provide repairs and maintenance of the property, keep a record of the notices of dangerous conditions as well as repair orders and invoices for work performed on each property.
- If any verbal discussions, negotiations, or agreements are had between you—the landlord or property manager—and the tenant, follow up in writing to confirm what was said, decided, and agreed-to.
- If a tenant is moving out, either at the end of a lease term or by eviction, the landlord or property manager should visit the property with the tenant and create a written list of damages and necessary cleaning. The list should be signed by the landlord/property manager and tenant. Provide a copy to the vacating tenant. If the tenant is unwilling to participate in a walk-through, the landlord or property manager should arrange for another witness to be present for the walk-through and confirm that the list of damages and necessary cleaning is accurate and sign the list. If necessary compare this list with a list that was created when the tenant moved into the property.
- If you are a real estate broker but not the landlord or property manager, direct the tenant to speak with the property manager or landlord directly. Do not volunteer to contact the property manager on behalf of the tenant to discuss habitability issues.

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NOTE that the information contained in this document is for general education and knowledge. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem or claim. Additionally, the situation surrounding COVID-19 is evolving and the subject matter discussed herein may change on a daily basis. Please contact an attorney for timely advice as to any specific issue that may arise.