



## Post Covid Habitability Claims: How New Jersey Property Managers Can Prepare

As Covid based legal limitations on eviction actions phase out and such actions are filed, it is inevitable that habitability defenses will be raised to fight the eviction or avoid paying rent. Accordingly, it is vital that property managers take steps now to meet such tactics.

Every New Jersey lease contains an implied warranty of habitability, which is a promise that there are no latent defects in the facilities that are vital to the use of the premises and that the premises shall be in usable condition during the term of the lease. This implied warranty of habitability can be raised as a defense in an eviction action arising from nonpayment of rent or as a basis for withholding of rental payments.

New Jersey courts have created a list of factors to help judges determine whether a violation has occurred. These factors include:

1. Has there been a violation of any applicable housing code or building or sanitary regulations?
2. Is the nature of the deficiency or defect such as to affect a vital facility?
3. What is its potential or actual effect upon safety and sanitation?
4. For what length of time has it persisted?
5. What is the age of the structure?
6. What is the amount of the rent?
7. Can the tenant be said to have waived the defect?
8. Was the tenant in any way responsible for the defective condition?

***Based on the legal precedent outlined above, below is a list of proposed tips on how to avoid habitability defenses.***

1. **Document all maintenance-related activities.** Be sure to document all maintenance requests by tenants and all responses. Any documentation should include the name of the tenant, the tenant's address or unit number, the date and time of the request, and a short description of the defect in need of maintenance and/or repair. Note the name of the staff member who responded to the request, the date and time of the response, a short description of the work done, and any follow up instructions given to the tenant.
2. **Respond to maintenance requests as soon as possible.** Landlords and their agents have a duty to tenants to provide housing that is suitable for living. Any failure to timely and adequately respond to a tenant's maintenance requests may be used as a defense



to a current or future eviction action. This is especially true where a tenant's request concerns a vital service, such as heat, water, plumbing, or electricity. Make sure there are a sufficient number of appropriately trained staff members to meet the maintenance and repair needs of the leased premises.

3. **Organize maintenance documentation.** Maintain an electronic or paper filing system that collates all the maintenance and/or repair requests for each tenant. This organization scheme will allow quick access to maintenance records should a tenant raise a habitability defense during an eviction proceeding.
4. **Consult with your attorney.** If a habitability claim is asserted against you, be sure to consult with your counsel before responding. Your attorney will be familiar with the legal framework surrounding habitability claims and can advise you as to the appropriate steps that should be taken in responding to the tenant's claim.
5. **Check your Insurance Coverage.** It is important to confirm that you are listed as an additional insured on the Landlords policy. Ask for a copy of the actual endorsement and policy to confirm the coverage. Likewise, all contracts must contain iron clad defense, indemnification and additional insured provisions.

**Sean X. Kelly**  
Attorney at Law  
Marks, O'Neill, O'Brien, Doherty & Kelly, P.C.

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