

ASSEMBLY, No. 2609

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JUNE 19, 2000

Sponsored by:

Assemblyman LEROY J. JONES, JR.

District 27 (Essex)

SYNOPSIS

Provides statutory tenants' right to repair and deduct.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning tenants' rights and supplementing chapter 18 of
2 Title 2A of the New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. The Legislature finds and declares:

8 a. In *Marini v. Ireland*, 56 N.J. 130 (1970), the New Jersey
9 Supreme court recognized an implied covenant of habitability and
10 livability fitness for residential dwellings. In performance of this
11 covenant a landlord is required to maintain rental facilities in a
12 condition which renders the property livable.

13 b. The court also found that the covenant bestows upon a tenant
14 an additional remedy for a breach. The added remedy permits the
15 tenant to remain in possession, make reasonable repairs, and deduct
16 the cost of the repairs from future rents. A tenant's recourse to
17 self-help has been extended to permit a reduction in the rent until
18 repairs are made. See *Berzito v. Gambino*, 63 N.J. 460 (1973).

19 c. Under current statutory law, a tenant who avails himself of the
20 repair and deduct remedy specified in the cases above may still be
21 taken to court by a landlord for non-payment of rent through eviction
22 proceedings. In addition, the tenant may be subject to eviction if the
23 removal of the tenant is deemed necessary to correct a construction
24 code violation.

25 d. Many tenants are not aware of their right to repair and deduct
26 under the common law, and could benefit from specific statutory
27 guidelines to aid them in obtaining such a remedy.

28 e. In addition, setting specific statutory guidelines and establishing
29 procedures and escrowing mechanisms to be employed for the repair
30 and deduct remedy will serve to aid landlords as well as tenants,
31 because it will eliminate the necessity to initiate eviction proceedings
32 for oversight of the repair and deduct process, and will help to ensure
33 that a tenant is properly entitled to the remedy.

34
35 2. a. If a landlord fails to make repairs and replacements of vital
36 facilities necessary to maintain residential rental premises in a livable
37 condition after notification by a tenant of the premises of the need for
38 such repairs and within a reasonable period of time adequate to
39 accomplish such repair and replacements, a tenant of the premises may
40 cause the same to be done and deduct the cost thereof from future
41 rents.

42 A tenant shall have such recourse only if the tenant notifies the
43 landlord of the faulty condition and allows the landlord a reasonable
44 amount of time to make the necessary replacement or repair. If the
45 tenant is unable to give such notice after a reasonable attempt, he may
46 nonetheless proceed to repair or replace, provided that the provisions

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1 of subsection b. of this section are met. The provisions of this section
2 shall not relieve a tenant from the payment of rent during the period
3 that the landlord fails to repair. The tenant shall only have the
4 alternative remedies of making the repairs or removing from the
5 premises upon constructive eviction.

6 Notification by a tenant to the landlord shall not be required
7 pursuant to this subsection if: (1) the landlord has been cited for a
8 violation of local or State codes concerning conditions with the rental
9 premises; (2) it is feasible to correct the conditions without removal
10 of the tenant; and (3) the landlord has failed to correct the conditions
11 within a reasonable time.

12 b. A tenant exercising the remedy of repair and deduct shall notify,
13 in writing, the code enforcement official of the municipality in which
14 the rental premises is located of the fact that the tenant is exercising
15 the remedy of repair and deduct. The notice shall include: proof that
16 the landlord was properly notified, if required under subsection a. of
17 this section, details of the condition of the vital facility involved and
18 the repairs contemplated. The tenant shall also include an estimate of
19 the cost of the repairs, and a projected time frame for the repairs. The
20 code enforcement official shall determine:

21 (1) if the repair proposed in fact involves a vital facility or if there
22 is a hazardous condition threatening the safety of residents; and

23 (2) whether it is feasible to correct the conditions without removal
24 of the tenant.

25 If the proposed repair, in the determination of the code official,
26 does not involve a vital facility or is not deemed to be a hazardous
27 condition threatening the safety of residents, then the code official
28 shall so notify the tenant, and the repair and deduct remedy shall not
29 be available to the tenant.

30 If the code official determines that the repair proposed in fact
31 involves a vital facility or if there is a hazardous condition threatening
32 the safety of residents, but determines it is not feasible to correct the
33 conditions without the removal of the tenant, then the code official
34 shall so notify the tenant, and shall supply the tenant with information
35 concerning relocation assistance, if it appears that constructive
36 eviction of the tenant is imminent.

37 If the code official determines that the repair proposed in fact
38 involves a vital facility or that a hazardous condition threatening the
39 safety of residents exists, and that it is feasible to repair the condition
40 without the removal of the tenants, then the code enforcement official
41 shall, in consultation with the tenant, establish a timetable for the
42 repairs, monitor the progress of the repairs, and require an accounting
43 from the tenant as to the deduction from rent for the payment of such
44 repairs.

45 c. The accounting required pursuant to subsection b. of this section
46 shall be viewable by the landlord of the premises on a reasonable basis
47 by appointment with the code enforcement official.

1 3. The Commissioner of Community Affairs shall promulgate the
2 necessary rules to effectuate this act pursuant to the "Administrative
3 Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.).

4
5 4. In any action for possession instituted by a landlord, no
6 judgment for possession shall be entered if a tenant of the rental
7 premises has exercised the right of repair and deduct in accordance
8 with the provisions of P.L. , c. (C.)(now before the
9 Legislature as this bill) until such time as the repair has been
10 completed as monitored by a code enforcement agent, and the grounds
11 for eviction is otherwise based on good cause.

12
13 5. The provisions of P.L. , c. (C.)(now before the
14 Legislature as this bill) shall not affect the rights of a tenant to any
15 remedy available under common law to make repairs to rental premises
16 and deduct the costs from rental payments, or the rights of a landlord
17 to institute proceedings for return of possession if no rights have been
18 exercised by a tenant pursuant to P.L. , c. (C.)(now before
19 the Legislature as this bill).

20
21 6. This act shall take effect immediately.

22
23
24 STATEMENT

25
26 This bill establishes a statutory right for a residential tenant to
27 repair hazardous conditions on the rental property and deduct from
28 rent payments the costs of the repairs. Although the right to repair
29 and deduct currently exists under common law, a tenant is still subject
30 to eviction by a landlord for nonpayment of rent, and must endure
31 court proceedings to uphold the right. In addition, many tenants are
32 not aware of the right to repair and deduct, and as a result hazardous
33 conditions on the rental property are allowed to worsen until the
34 tenant is constructively evicted.

35 The bill will provide tenants a method of utilizing the remedy
36 without the necessity of court proceedings. In addition, the bill
37 provides safeguards for a landlord in that the deduction of payments
38 from rent will be monitored by the code official of the municipality in
39 which the property is located. In this manner, tenants will not be
40 permitted to withhold money from rent payments for items which are
41 not truly necessary for the habitability of the property.

42 The bill does not eliminate the common law right to repair and
43 deduct, nor the rights of a landlord to institute eviction proceedings if
44 the statutory remedy is not invoked by a tenant.

45 Specifically, the bill authorizes a tenant of residential premises to
46 make repairs and replacements of vital facilities necessary to maintain

1 residential rental premises in a livable condition, and to deduct the
2 costs of the repairs from the rent. A tenant must first notify the
3 landlord of the faulty condition and allow the landlord a reasonable
4 amount of time to make the necessary replacement or repair. The
5 tenant shall only have the alternative remedies of making the repairs
6 or removing from the premises upon constructive eviction.

7 Notification by a tenant to the landlord shall not be required if: (1)
8 the landlord has been cited for a violation of local or State codes
9 concerning conditions with the rental premises; (2) it is feasible to
10 correct the conditions without removal of the tenant; and (3) the
11 landlord has failed to correct the conditions within a reasonable time.

12 The bill requires a tenant exercising the remedy of repair and deduct
13 to notify, in writing, the code enforcement official of the municipality
14 in which the rental premises is located of the fact that the tenant is
15 exercising the remedy of repair and deduct. The notice shall include:
16 proof that the landlord was properly notified, if required, details of the
17 condition of the vital facility involved and the repairs contemplated.
18 The tenant shall also include an estimate of the cost of the repairs, and
19 a projected time frame for the repairs. The code enforcement official
20 shall determine:

21 (1) if the repair proposed in fact involves a vital facility or if there
22 is a hazardous condition threatening the safety of residents; and

23 (2) whether it is feasible to correct the conditions without removal
24 of the tenant.

25 If the proposed repair, in the determination of the code official,
26 does not involve a vital facility or is not deemed to be a hazardous
27 condition threatening the safety of residents, then the code official
28 shall so notify the tenant, and the repair and deduct remedy shall not
29 be available to the tenant.

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33 conditions without the removal of the tenant, then the code official
34 shall so notify the tenant, and shall supply the tenant with information
35 concerning relocation assistance, if it appears that constructive
36 eviction of the tenant is imminent.

37 If the code official determines that the repair proposed in fact
38 involves a vital facility or that a hazardous condition threatening the
39 safety of residents exists, and that is feasible to repair the condition
40 without the removal of the tenants, then the code enforcement official
41 shall, in consultation with the tenant, establish a timetable for the
42 repairs, monitor the progress of the repairs, and require an accounting
43 from the tenant as to the deduction from rent for the payment of such
44 repairs. The accounting required pursuant to the bill shall be viewable
45 by the landlord of the premises on a reasonable basis by appointment
46 with the code enforcement official.