

Real Prop. Law § 235-b: Implied Warranty of Habitability Held Applicable to New York City-Owned Residential Property

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islature, it is suggested that the adoption of a strict construction of section 3014-b by the courts may minimize the problems the statute has created.

Lorraine Novinski

REAL PROPERTY LAW

Real Prop. Law § 235-b: Implied warranty of habitability held applicable to New York City-owned residential property

Section 235-b of the Real Property Law provides that every residential lease contains an implied warranty that the leased premises are fit for human habitation.⁴⁰ For more than a decade,

involve pupils who remain enrolled in the school district, both before and after any takeover. While both BOCES and the district are interested in protecting the rights of teachers, the district has the additional responsibility of protecting the best interests of the children. See N.Y. EDUC. LAW § 1709 (McKinney 1969 & Supp. 1982-1983). Moreover, while BOCE'S obligations in regard to the participating district are limited to those imposed by contract, see 89 App. Div. 2d at 276, 455 N.Y.S.2d at 330, the school districts have a statutory duty to insure that instruction is given by competent teachers, see N.Y. EDUC. LAW § 3204 (McKinney 1981). In view of this important difference, there appears to be significant justification for requiring BOCES to accept a district's decision to award tenure to its teachers while not requiring the district to accept BOCE'S tenure determinations. It is therefore suggested that the legislature's intention to afford teachers identical rights in the two takeover situations, see *Stavisky Memorandum, supra* note 4, at 158, may have been ill-advised.

⁴⁰ Section 235-b of the Real Property Law provides:

1. In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. When any such condition has been caused by the misconduct of the tenant or lessee or persons under his direction or control, it shall not constitute a breach of such covenants and warranties.

2. Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.

N.Y. REAL PROP. LAW § 235-b (McKinney Supp. 1982-1983).

Under traditional concepts of real property law, a lease was regarded as a conveyance of real property for a specified term. *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316, 322, 391 N.E.2d 1288, 1291, 418 N.Y.S.2d 310, 313, cert. denied, 444 U.S. 992 (1979); 2 R. POWELL, REAL PROPERTY ¶ 221[1], at 179 (P. Rohan ed. 1977); Note, *Recovery Under the Implied Warranty of Habitability*, 10 FORDHAM URB. L.J. 285, 286 (1982); see, e.g., *Fowler v. Bott*, 6 Mass. 62, 67 (1809). The lessor was obligated by law only to deliver possession of the premises and to provide for continued quiet enjoyment by the lessee. *Park West*, 47 N.Y.2d at 322, 391 N.E.2d at 1291, 418 N.Y.S.2d at 313; Note, *supra*, at 286. Absent an express provision to the contrary, the landlord was under no duty to maintain the premises

New York courts have recognized that a landlord's breach of the warranty of habitability gives rise to a cause of action which a tenant may assert as an independent claim for damages or as an affirmative defense in a landlord's proceeding to recover unpaid rent.⁴¹ No court, however, has specifically considered whether the City of New York as an owner of residential property, is subject to the implied warranty of habitability.⁴² Recently, in *City of New*

in a habitable condition during the lease period. *Franklin v. Brown*, 118 N.Y. 110, 115, 23 N.E. 126, 127 (1889); see Comment, *Landlord-Tenant-Caveat Emptor-Implied Warranty of Habitability in Residential Leases-Tonetti v. Penati*, 21 N.Y.L.F. 613, 616 (1976). Even where there existed an express covenant to repair, the lessee's only remedy was an independent cause of action for damages. *Park West*, 47 N.Y.2d at 323, 391 N.E.2d at 1291, 418 N.Y.S.2d at 313; Comment, *supra*, at 616; see *Kaufman v. Tarulli*, 136 N.Y.S. 36, 36 (Sup. Ct. App. T. 1st Dep't 1912). Gradually, however, the residential lease came to be regarded by the courts as a contract, see, e.g., *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1075 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970), containing an implied warranty of habitability, *Tonetti v. Penati*, 48 App. Div. 2d 25, 30, 367 N.Y.S.2d 804, 808 (2d Dep't 1975); see, e.g., *Kipsborough Realty Corp. v. Goldbetter*, 81 Misc. 2d 1054, 1057, 367 N.Y.S.2d 916, 920 (N.Y.C. Civ. Ct. N.Y. County 1975); *Morbeth Realty Corp. v. Velez*, 73 Misc. 2d 996, 999, 343 N.Y.S.2d 406, 410 (N.Y.C. Civ. Ct. N.Y. County 1973); *Amanuensis, Ltd. v. Brown*, 65 Misc. 2d 15, 21, 318 N.Y.S.2d 11, 18 (N.Y.C. Civ. Ct. N.Y. County 1971). The implied warranty doctrine was codified in August 1975 when section 235-b of the Real Property Law was enacted. See N.Y. REAL PROP. LAW § 235-b (McKinney Supp. 1982-1983); see *Kaplan v. Coulston*, 85 Misc. 2d 745, 747, 381 N.Y.S.2d 634, 635 (N.Y.C. Civ. Ct. Bronx County 1976). See generally Note, *supra*, at 285-321.

⁴¹ *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316, 329, 391 N.E.2d 1288, 1295, 418 N.Y.S.2d 310, 317, cert. denied, 444 U.S. 992 (1979); Memorandum of Sen. Barclay, reprinted in [1975] N.Y. LEGIS. ANN. 315. The fact that the amount of damage suffered might not be susceptible to precise determination should not bar an award of damages. 111 East 88th Partners v. Simon, 106 Misc. 2d 693, 695, 434 N.Y.S.2d 886, 888 (N.Y.C. Civ. Ct. N.Y. County 1980). In the absence of other evidence, the value of an apartment as warranted will be measured by the rental agreement for the purpose of determining damages for breach of the implied warranty of habitability. *Id.*

Aside from giving rise to an action for damages, the warranty may also be employed by tenants as an affirmative defense in nonpayment proceedings. See *Park West*, 47 N.Y.2d at 329-30, 391 N.E.2d at 1295, 418 N.Y.S.2d at 317-18. In *Park West*, a 17-day strike by the maintenance and janitorial staff of an apartment complex caused uncollected garbage to accumulate and created conditions in which rats, roaches and vermin flourished. *Id.* at 326, 391 N.E.2d at 1293, 418 N.Y.S.2d at 315. In response, some of the tenants withheld rent for the period of time encompassed by the strike. *Id.* When the landlord commenced a summary nonpayment proceeding, the tenants raised the affirmative defense of breach of the implied warranty of habitability. *Id.* Holding that the conditions caused by the strike did constitute such a breach, the Court of Appeals permitted a reduction in the contracted-for rent as a setoff against the rent due. *Id.* at 329-30, 391 N.E.2d at 1295, 418 N.Y.S.2d at 317-18.

⁴² See *City of New York v. Rodriguez*, 117 Misc. 2d 986, 987, 461 N.Y.S.2d 149, 150 (Sup. Ct. App. T. 1st Dep't 1983). In *Curry v. New York City Housing Auth.*, 77 App. Div. 2d 534, 430 N.Y.S.2d 305 (1st Dep't 1980), the plaintiff attempted to hold the City of New York strictly liable under section 235-b for damages sustained when a two-year-old child fell out of a defective window in a city-owned apartment. *Id.* at 535, 430 N.Y.S.2d at 306. With-

York v. Rodriguez,⁴³ the Appellate Term, First Department, held that the implied warranty of habitability applies to city-owned residential housing, thus allowing a tenant of such housing to assert the landlord's breach as an affirmative defense to a nonpayment proceeding.⁴⁴

In *Rodriguez*, the City of New York, as landlord, initiated a proceeding to recover rental arrears.⁴⁵ The tenant admitted withholding the rent but pleaded, as an affirmative defense, the landlord's breach of the implied warranty of habitability.⁴⁶ Although the tenant's allegations were sufficient to state a breach of the warranty of habitability,⁴⁷ the Civil Court, New York County, concluded that such a defense could not be asserted against the City of New York and summarily awarded judgment in the landlord's favor.⁴⁸

On appeal, the Appellate Term, First Department, unanimously reversed, reinstating the tenant's affirmative defense and

out addressing the issue of whether the implied warranty of habitability applies to city-owned residential property, the Appellate Division, First Department, refused to adopt a standard of strict liability under section 235-b and, accordingly, dismissed the claim for failure to state a cause of action. *Id.*

⁴³ 117 Misc. 2d 986, 461 N.Y.S.2d 149 (Sup. Ct. App. T. 1st Dep't 1983).

⁴⁴ *Id.* at 989, 461 N.Y.S.2d at 152.

⁴⁵ *Id.* at 986, 461 N.Y.S.2d at 150. In its initial petition, the City of New York sought to recover rental arrears of \$975, representing unpaid rent for the months of February through May 1981. *Id.* The petition was later amended, however, to include additional months of unpaid rent. *Id.* The total amount requested at trial was \$1,545. *Id.*

⁴⁶ *Id.* The tenant alleged that the apartment contained defective bathroom plumbing, a broken toilet, loose bathroom tiles, cracked kitchen walls, a broken refrigerator door, defective wiring, and roaches. *Id.* at 986-87, 461 N.Y.S.2d at 150.

⁴⁷ *Id.* at 987, 461 N.Y.S.2d at 150 (citing *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316, 328, 391 N.E.2d 1288, 1294-95, 418 N.Y.S.2d 310, 317, *cert. denied*, 444 U.S. 992 (1979); *Goldner v. Doknovitch*, 88 Misc. 2d 88, 89, 388 N.Y.S.2d 504, 506 (Sup. Ct. App. T. 1st Dep't 1976)).

⁴⁸ 117 Misc. 2d at 986, 461 N.Y.S.2d at 150. The Civil Court, New York County, in holding that the affirmative defense of breach of the warranty of habitability could not be asserted against the City of New York relied on *Salzman v. Brown*, 67 Misc. 2d 101, 324 N.Y.S.2d 358 (N.Y.C. Civ. Ct. Kings County 1971), *see* 117 Misc. 2d at 988, 461 N.Y.S.2d at 151. In *Salzman*, a tenant attempted to defend against a nonpayment proceeding brought by an administrator appointed pursuant to article 7A of the Real Property Actions and Proceedings Law (RPAPL) by demonstrating hazardous conditions in residential premises. 67 Misc. 2d at 103, 324 N.Y.S.2d at 361. The court refused to allow this defense, stating that the remedy of rent abatement was directed toward landlords who exploit tenants by failing to make repairs and provide essential services, not article 7A administrators who are appointed to oversee the rehabilitation of neglected property. *Id.* The court reasoned that to approve the withholding of rent from an article 7A administrator would merely encourage his resignation and operate as a disincentive to securing the necessary repairs and improvements. *Id.* at 103-04, 324 N.Y.S.2d at 361.

ordering a trial.⁴⁹ The court observed that neither the language of section 235-b nor its legislative history indicates an intent to exempt the City in its capacity as residential landlord from the scope of the implied warranty.⁵⁰ The First Department was not persuaded by the landlord's argument that, since the City acquires title to residential housing through foreclosure proceedings and applies rental payments to rehabilitate the property, allowing tenants to secure rent abatements would frustrate the City's attempt to restore neglected or abandoned housing.⁵¹ Although the court was not without sympathy for the landlord's position, it determined that requiring tenants of City-owned property to pay for services not received would be inequitable.⁵² The fact that the City was not attempting to make a profit, the court concluded, did not alter this result.⁵³

It is submitted that the *Rodriguez* court's application of section 235-b to City-owned residential property is consistent with

⁴⁹ 117 Misc. 3d at 986, 461 N.Y.S.2d at 150. Justices Hughes and Sullivan joined in the unanimous opinion authored by Presiding Justice Dudley. *Id.*

⁵⁰ *Id.* at 988-89, 461 N.Y.S.2d at 151. The court noted that a judicially implied warranty of habitability was used to protect tenants in New York prior to the enactment of section 235-b. *Id.* at 987, 461 N.Y.S.2d at 150. The statute, explained the court, expressly applies to any individual or organization operating as a landlord, and creates no exemption for any particular category of lessors. *Id.* at 989, 461 N.Y.S.2d at 151. Pointing to other remedial tenant statutes that expressly exempt the City from coverage, the *Rodriguez* court deemed the absence of a like exemption in section 235-b significant. *Id.*

⁵¹ *Id.* at 989-90, 461 N.Y.S.2d at 152. The City acquired title to the property in question as a result of tax foreclosure proceedings. *Id.* at 989, 461 N.Y.S.2d at 151-52. The City explained that foreclosure also may be brought about pursuant to a lien on the property for money owed the City for sums expended in remedying unsafe or unhealthy living conditions. *Id.* Rental payments, the City argued, are used to rehabilitate these premises in order that the buildings may be restored and resold. *Id.*, 461 N.Y.S.2d at 152. Thus, the City urged that success in this endeavor requires the guaranteed payment of rent. *Id.* at 989-90, 461 N.Y.S.2d at 152.

In making this argument, the landlord sought to analogize its position to that of an administrator appointed to remedy unsafe or unhealthy conditions pursuant to article 7A of the RPAPL, against whom the affirmative defense of breach of the warranty of habitability may not be asserted. *See id.*; *Salzman v. Brown*, 67 Misc. 2d 101, 103, 324 N.Y.S.2d 358, 361 (N.Y.C. Civ. Ct. Kings County 1971); *see also* RPAPL § 778 (1978); *supra* note 48. While acknowledging that "certain of the attributes . . . impute[d] to article 7-A administrators may also be imputed to the City," the court did not find *Salzman* controlling. *See* 117 Misc. 2d at 989, 461 N.Y.S.2d at 151. Instead, the court based its holding on legislative intent and the express language of the statute. *Id.* at 989-90, 461, N.Y.S.2d at 151.

⁵² 117 Misc. 2d at 990, 461 N.Y.S.2d at 152. The court stated: "[W]e perceive no logic in requiring tenants of City-owned property to pay rent for services not received while recognizing the right of tenants of privately owned property to abate their rents under identical circumstances." *Id.*

⁵³ *Id.*

the policy considerations underlying the implied warranty of habitability.⁵⁴ The implied warranty of habitability developed in response to the inequality of bargaining power between landlord and tenant in a tight housing market.⁵⁵ Tenants of City-owned prem-

⁵⁴ See *infra* notes 55-60 and accompanying text. Courts have construed section 235-b literally. See, e.g., *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316, 327, 391 N.E.2d 1288, 1294, 418 N.Y.S.2d 310, 316, *cert. denied*, 444 U.S. 992 (1979); *Whitehouse Estates, Inc. v. Thomson*, 87 Misc. 2d 813, 814, 386 N.Y.S.2d 733, 734 (N.Y.C. Civ. Ct. N.Y. County 1976); see also *The Survey* 54 *ST. JOHN'S L. REV.* 194, 195 (1979). See generally Note, *supra* note 40, at 300-01. The simple language of section 235-b and the absence of any specific enumeration of procedural requirements or possible causes of action reflect the legislature's intent to enact a statute that would be adaptable to the various types of cases that might be presented to the courts. See Speech by Senator H. Douglas Barclay to the New York Senate (June 17, 1975), cited in Note, *New York's Search for an Effective Implied Warranty of Habitability in Residential Leases*, 43 *ALB. L. REV.* 661, 664-65 nn.21, 29 (1979). Governor Carey explained:

It may have been possible to expressly provide for procedures and remedies. However, the circumstances and situations in which tenants will be seeking to enforce the warranty will take many forms. Tenants have utilized the doctrine affirmatively as well as defensively; as a counterclaim, set-off, and defense in non-payment of rent proceedings. . . . It will be the courts' function to fashion remedies appropriate to the facts of each case.

Governor's Memorandum on Approval of ch. 597, N.Y. Laws (Aug. 1, 1975), reprinted in [1975] N.Y. Laws 1761 (McKinney). A good example of the adaptability of section 235-b is *Suarez v. Rivercross Tenant's Corp.*, 107 Misc. 2d 135, 438 N.Y.S.2d 164 (Sup. Ct. App. T. 1st Dep't 1981). In *Suarez*, the Appellate Term, First Department, held that, although there were no clear indicia of legislative intent, public policy considerations require the extension of the implied warranty of habitability to cooperative housing. *Id.* at 139, 438 N.Y.S.2d at 167. See generally *The Survey*, 55 *ST. JOHN'S L. REV.* 800, 804-06 (1981).

⁵⁵ See *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316, 324-25, 391 N.E.2d 1288, 1292, 418 N.Y.S.2d 310, 314, *cert. denied*, 444 U.S. 992 (1979); *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1079 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970); Note, *supra* note 40, at 291. Governor Carey, in approving section 235-b stated that "[t]o a very large extent, the doctrine of caveat lessee still prevails and requires a tenant to take the premises as they are and assume all risks as to their condition. . . . By one large step this bill moves the law of landlord and tenant into the twentieth century." Governor's Memorandum on Approval of ch. 597, N.Y. Laws (Aug. 1, 1975), reprinted in [1975] N.Y. Laws 1760 (McKinney). The Senate sponsor of the bill, Senator H. Douglas Barclay, described the prospective effect of section 235-b on the landlord-tenant relationship as "put[ting] the tenant in parity legally with the landlord." 1975 N.Y. Sen. J. 7766-67.

In the modern landlord-tenant relationship, it is the shelter and the related services, and not possession of the land, that constitute the essential features of the bargain. *Park West*, 47 N.Y.2d at 324, 391 N.E.2d at 1292, 418 N.Y.S.2d at 314; Note, *supra* note 54, at 662. Tenants are generally ill-equipped to be charged with responsibility of maintaining the habitable conditions of the leased premises. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1077-78 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970). The lease, therefore, more closely resembles a contract for the sale of shelter and the performance of essential services than a conveyance of real property. See 47 N.Y.2d at 324, 391 N.E.2d at 1292, 418 N.Y.S.2d at 314; *Kipsborough Realty Corp. v. Goldbetter*, 81 Misc. 2d 1054, 1057, 367 N.Y.S.2d 916, 920 (N.Y.C. Civ. Ct. N.Y. County 1975); Note, *supra* note 40, at 291. Accordingly, the law of sales, providing for an implied warranty of fitness, see N.Y.U.C.C. § 2-314 (McKinney 1964),

ises suffer from the same lack of bargaining power as their private sector counterparts.⁶⁶ Faced with a severe housing shortage⁶⁷ and ever-increasing rents, these tenants often have nowhere else to go and virtually no power to bargain for the inclusion of favorable lease terms.⁶⁸ Thus, it appears that the same conditions which necessitated the enactment of section 235-b require the extension of its remedies to public tenants.⁶⁹

serves as a better model for modern landlord-tenant law than the law of property, 47 N.Y.2d at 324, 391 N.E.2d at 1292, 418 N.Y.S.2d at 314; 81 Misc. 2d at 1056, 367 N.Y.S.2d at 919.

⁶⁶ Buildings acquired through tax foreclosure proceedings generally are badly deteriorated and house low-income tenants. *Sidberry v. Koch*, 539 F. Supp. 413, 415-16 (S.D.N.Y. 1982). The City of New York may also foreclose upon residential buildings pursuant to a lien for sums expended pursuant to the Emergency Repairs Program. *See* 461 N.Y.S.2d at 151-52; R. ALPERN, PRATT GUIDE TO PLANNING AND RENEWAL FOR NEW YORKERS 261 (1973). Under this program, the City provides for emergency repairs, fuel deliveries, superintendent services, lead-paint poisoning prevention or payment for public utilities where a building has been declared immediately dangerous to health. R. ALPERN, *supra*, at 261. It may be inferred that tenants of buildings acquired under the above program are generally in straits as grim as those of buildings foreclosed for unpaid taxes.

⁶⁷ The major problem with residential housing in New York City is the shortage of apartment units. NEW YORK CITY PLANNING COMMISSION, PLAN FOR NEW YORK CITY 1969: A PROPOSAL 51 (1969) [hereinafter cited as A PROPOSAL]. The vacancy rate in New York City is well below the generally desirable rate. 2 DEP'T OF CITY PLANNING, CITY OF NEW YORK, PLANNING FOR HOUSING IN NEW YORK CITY 13 (1977). A 1977 study indicated that public housing projects built or operated by the City of New York contained 176,000 apartment units. *Id.* at 7. In the same year, there were 140,000 households on the New York City Housing Authority's waiting list for public housing. *Id.* at 21.

⁶⁸ *See supra* notes 56-57. Apartment rents in dilapidated housing in ghetto areas are generally higher than their relative market values, yet tenants pay the inflated prices because alternative housing is unavailable. A PROPOSAL, *supra* note 57, at 54.

⁶⁹ *See supra* notes 40 & 54-58 and accompanying text. In *Housing Auth. v. Scott*, 137 N.J. Super. 110, 348 A.2d 195 (Super. Ct. App. Div. 1975), the New Jersey Appellate Division stated:

The housing authority as a landlord can claim no exemption from the obligation to furnish habitable accommodations for its tenants. No federal regulation has been called to our attention which would prevent reducing a tenant's rent when he has been deprived of facilities or services to which he is entitled and which are included in the established rent.

Id. at 116-17, 348 A.2d at 198. Courts in other jurisdictions have reached similar conclusions. *See, e.g.*, *National Capital Hous. Auth. v. Douglas*, 333 A.2d 55, 56 (D.C. 1975) (in public landlord's summary action based on nonpayment of rent, tenant permitted setoff in the amount of damages sustained due to landlord's breach of the warranty of habitability); *Boston Hous. Auth. v. Hemmingway*, 363 Mass. 184, 202-03, 293 N.E.2d 831, 843 (1972) (public housing authority's breach of the implied warranty of habitability constituted defense to landlord's nonpayment of rent proceeding); *cf. Hubbs v. People ex rel. Department of Pub. Works*, 36 Cal. App. 3d 1005, 1009, 112 Cal. Rptr. 172, 175 (1974) (tenants of state-owned property entitled to same legal remedies as tenants of privately owned property). *But see Alexander v. HUD*, 555 F.2d 166, 171 (7th Cir. 1977) (implied warranty of habitability not applicable to federally owned public housing), *aff'd*, 441 U.S. 39 (1979).

In the absence of a clear legislative directive to the contrary, courts have declined to differentiate the landlord-tenant relationship in public housing from that in the private sphere.⁶⁰ On its face, section 235-b creates no such distinction.⁶¹ Although one result of permitting tenants to assert breach of the implied warranty of habitability against the City might be a further drain on the City's resources, it is submitted that such an additional financial burden does not justify holding the City to a lesser degree of responsibility for tenant safety than that imposed on a private landlord. Indeed, one New York court has held that when the City serves as a temporary administrator of privately owned, abandoned residential property, the tenants of such premises are entitled to rent abatement, if habitable housing is not provided.⁶²

The statutory implied warranty of habitability ensures all tenants the right to habitable premises.⁶³ Thus, it is suggested, the

⁶⁰ See *Mesivta of Forest Hills, Inst. Inc. v. City of New York*, 79 App. Div. 2d 676, 677, 434 N.Y.S.2d 40, 42 (2d Dep't 1980) (N.Y. Real Prop. Law § 232-a (McKinney 1968), requiring personal service of notice of termination of month-to-month tenancy, held applicable to City of New York as landlord); *Farrell Lines, Inc. v. City of New York*, 63 Misc. 2d 542, 544, 312 N.Y.S.2d 260, 263 (Sup. Ct. N.Y. County 1970), *aff'd*, 35 App. Div. 2d 788, 315 N.Y.S.2d 794 (1st Dep't 1970) (N.Y. Real Prop. Law § 232-c (McKinney 1968), requiring acceptance of rent by landlord as a condition precedent to creation of holdover tenancy, held applicable to City of New York as landlord); *Allan v. Binghamton Hous. Auth.*, 82 Misc. 2d 932, 934, 372 N.Y.S.2d 835, 837 (Binghamton City Ct. 1975) (public tenant had standing to maintain action against housing authority under RPAPL § 721 (1979 & Supp. 1981-1982) to regain possession of apartment); *Mount Vernon Hous. Auth. v. McCoy*, 79 Misc. 2d 472, 477, 360 N.Y.S.2d 186, 192 (Mount Vernon City Ct. 1974) (public housing authority, as landlord, held to requirement of N.Y. Real Prop. Law § 232-b (McKinney 1968) that notice terminating a month-to-month tenancy be unequivocally worded), *aff'd*, 83 Misc. 2d 856, 372 N.Y.S.2d 746 (Sup. Ct. App. T. 2d Dep't 1975).

⁶¹ N.Y. REAL PROP. LAW § 235-b (McKinney Supp. 1982-1983). The statute decrees that "every . . . lease or rental agreement for residential premises," made by a "landlord or lessor," contains an implied warranty of habitability. *Id.*

⁶² See *Housing Auth. v. Ruel Realty*, 94 Misc. 2d 43, 48, 404 N.Y.S.2d 941, 944-45 (N.Y.C. Civ. Ct. N.Y. County 1978). In *Ruel*, the City of New York was held to a duty to use reasonable efforts to provide habitable housing to tenants of privately owned, abandoned residential property. *Id.* at 48, 404 N.Y.S.2d at 944-45. After appointing the City temporary administrator under article 7A, the court permitted the tenants rent abatements pending the City's filing of a report establishing compliance with the court's directives. *Id.* at 51-52, 404 N.Y.S.2d at 946-47. The allowance of rent abatements in *Ruel* is noteworthy because existing precedent prohibited such a remedy against private sector article 7A administrators. See *Salzman v. Brown*, 67 Misc. 2d 101, 103, 324 N.Y.S.2d 358, 361 (N.Y.C. Civ. Ct. Kings County 1971); *supra* note 48. Moreover, as part of the effort to remedy the dangerous conditions of the property, the *Ruel* court directed the city housing administration "to consider having the city take title." 94 Misc. 2d at 51, 404 N.Y.S.2d at 946.

⁶³ See *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316, 325, 327-28, 391 N.E.2d 1288, 1292-95, 418 N.Y.S.2d 310, 315-17, *cert. denied*, 444 U.S. 992 (1979); *Suarez v.*

court's decision was consonant with the legislature's intent in refusing to exempt an entire class of individuals from the protection of section 235-b simply because the landlord is the City of New York.⁶⁴

Marie B. Darienzo

SURROGATE'S COURT PROCEDURE ACT

SCPA § 201: Statute permits jurisdiction over an eviction proceeding related to the administration of the decedent's estate, but does not confer jurisdiction over tenants' claims of malicious prosecution and abuse of process against executor

The jurisdiction of the surrogate's court is established by Article VI, Section 12 of the New York State Constitution.⁶⁵ This constitutional grant has been augmented by the enactment of Section 201 of the Surrogate's Court Procedure Act (SCPA),⁶⁶ which allows

Rivercross Tenant's Corp., 107 Misc. 2d 135, 138-39, 438 N.Y.S.2d 164, 167 (Sup. Ct. App. T. 1st Dep't 1981); 111 East 88th Partners v. Simon, 106 Misc. 2d 693, 695, 434 N.Y.S.2d 886, 888 (N.Y.C. Civ. Ct. N.Y. County 1980); *supra* note 40.

⁶⁴ See Moskowitz, *The Implied Warranty of Habitability: A New Doctrine Raising New Issues*, 62 CALIF. L. REV. 1444, 1447 n.18 (1974); *supra* notes 54-59 and accompanying text. In affording tenants of state-owned property the same legal remedies as private-sector tenants, the California Court of Appeal in *Hubbs v. People ex rel. Department Pub. Works*, 36 Cal. App. 3d 1005, 112 Cal. Rptr. 172 (1974), stated:

In actuality the state . . . is functioning as a landlord Plaintiffs, as tenants, are entitled to pursue the legal remedies normally available to tenants. In the absence of a specific statute so declaring or agreement so specifying plaintiffs, as tenants, do not lose any of their rights merely because their landlord happens to be the State of California.

Id. at 1009, 112 Cal. Rptr. at 175.

⁶⁵ Article VI, Section 12 of the New York State Constitution provides, in pertinent part:

The Surrogate's court shall have jurisdiction over all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto, guardianship of the property of minors, and such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law.

N.Y. CONST. art. VI, § 12(d). Notably, this provision confers limited jurisdiction directly upon surrogates' courts without the need for statutory implementation. Midonick, *Bicentennial Reflections on Expanding Jurisdiction of Surrogates*, 31 REC. A.B. CTRY N.Y. 335, 342 (1976). Pursuant to former constitutional provisions, surrogates' courts were granted jurisdiction solely by legislative enactment: "Surrogates' courts shall have the jurisdiction, legal and equitable, and powers now established by law until otherwise provided by the legislature." N.Y. CONST. OF 1925, art. VI, § 13; N.Y. CONST. OF 1894, art. VI, § 15.

⁶⁶ SCPA § 201, entitled "General jurisdiction of the surrogate's court," provides: