

# Rent Strike Legislation--New York's Solution to Landlord-Tenant Conflicts

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## RENT STRIKE LEGISLATION —

## NEW YORK'S SOLUTION TO LANDLORD-TENANT CONFLICTS

The winter of 1963-64 exposed residents of New York City to the spectacle of tenants of hundreds of buildings refusing to pay rents. These so-called "rent strikes" resulted from the substandard conditions in which these tenants were forced to live and raise their families. Dangers from disrepair, inadequacy of sanitary facilities and infestation by vermin were widespread. During the 1964 New York legislative session, several bills were introduced which were aimed at the alleviation of these conditions.<sup>1</sup> Finally, in 1965, formal action was taken with the enactment of amendments to the Multiple Dwelling Law<sup>2</sup> and the Real Property Actions and Proceedings Law.<sup>3</sup>

A proper understanding of these amendments requires a consideration of the nature of the landlord-tenant relationship as it existed prior to their enactment. At common law, in the absence of an express covenant, the landlord had no obligation to furnish premises which were suitable for the purposes for which they were leased, or which were even habitable.

It is not open to discussion in [New York] . . . that a lease of real property . . . contains no implied covenant of [suitability for intended use] . . . and that in the absence of an express covenant, unless there has been fraud, deceit or wrong-doing on the part of the landlord, the tenant is without remedy even if the demised premises are unfit for habitation.<sup>4</sup>

A similar rule applied in the area of repairs, it being consistently held that in the absence of a specific covenant, the landlord owed his tenant no obligation to maintain the premises in any state of repair.<sup>5</sup> This rule apparently was based upon the concept that, absent a reservation of a right of re-entry by the landlord, such action would be adjudged a trespass.<sup>6</sup> It could be concluded, therefore, that the tenant alone would reasonably be expected to perform any necessary repairs.

Once a tenant entered into the peaceful possession of the premises, the landlord could do nothing either directly or through third persons which would interfere with this possession or the enjoyment thereof. If a landlord did so interfere, the question of a possible

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<sup>1</sup> Note, *Rent Withholding and the Improvement of Substandard Housing*, 53 CALIF. L. REV. 304, 325 (1965).

<sup>2</sup> N.Y. MULT. DWELL. LAW § 302-a.

<sup>3</sup> N.Y. RPAPL §§ 769-82.

<sup>4</sup> *Franklin v. Brown*, 118 N.Y. 110, 113, 23 N.E. 126, 127 (1889).

<sup>5</sup> See *Welson v. Neujan Bldg. Corp.*, 264 N.Y. 303, 190 N.E. 648 (1934).

<sup>6</sup> *Steinfeld v. Morris*, 258 App. Div. 228, 16 N.Y.S.2d 155 (1st Dep't 1939).

eviction would be presented. There are two forms which such an eviction can assume—actual and constructive—each of which is characterized by the nature of the act which underlies the disturbance of possession and enjoyment of the premises.

An actual eviction is effected by an act of the landlord resulting in a physical ouster of the tenant from the premises.<sup>7</sup> It may be total or partial, depending upon whether the tenant is evicted from all or merely a portion of the premises. An excellent discussion of the latter is found in *Fifth Ave. Bldg. Co. v. Kernochan*.<sup>8</sup> There, the City of New York revoked a license for, and excluded the tenant from the use of, a portion of the premises—a vault beneath the sidewalk. In holding that the tenant might remain in possession, the Court asserted that an actual ouster from a more than incidental portion of the premises suspends the obligation to pay rent either in whole or in part. It was stated:

If such an eviction, though partial only, is the act of the landlord, it suspends the entire rent because the landlord [cannot] . . . apportion his own wrong. If the eviction is the act of a stranger by force of paramount title [as was the situation in this case], the rent will be apportioned, and a recovery permitted for the value of the land retained.<sup>9</sup>

On the other hand, constructive eviction does not require an actual physical ouster, but rather any disturbance of the tenant's possession or enjoyment which renders the premises unfit for the purposes for which they were leased,<sup>10</sup> or which seriously restricts the tenant's enjoyment of them. As is true in the case of an actual eviction, the acts must be those of the landlord or of someone acting under his authority.<sup>11</sup> In order to take advantage of a constructive eviction, the tenant must abandon the premises within a reasonable time.<sup>12</sup> It is not necessary that the landlord's acts be performed with the intention of interfering with the tenant's possession or enjoyment; it is sufficient that his actions or omissions result in the existence of such interference.<sup>13</sup>

Although there can be a partial actual eviction, it would appear reasonable to deny this total-partial distinction in the area of constructive eviction. This would seem necessary because of the requirement of abandonment. Since constructive eviction was designed to provide tenants with a remedy where a landlord's acts did not

<sup>7</sup> *Jackson v. Paterno*, 58 Misc. 201, 108 N.Y. Supp. 1073 (Sup. Ct.), *aff'd*, 128 App. Div. 474, 112 N.Y. Supp. 924 (1st Dep't 1908).

<sup>8</sup> 221 N.Y. 370, 117 N.E. 579 (1917).

<sup>9</sup> *Id.* at 373, 117 N.E. at 580.

<sup>10</sup> *Supra* note 7, at 204, 108 N.Y. Supp. at 1075.

<sup>11</sup> 33 N.Y. JUR. *Landlord and Tenant* § 169 (1964).

<sup>12</sup> *Seaboard Realty Co. v. Fuller*, 33 Misc. 109, 67 N.Y. Supp. 146 (Sup. Ct. 1900).

<sup>13</sup> *Tallman v. Murphy*, 120 N.Y. 345, 24 N.E. 716 (1890).

amount to a physical ouster, some proof of inability to possess or enjoy had to be shown.<sup>14</sup> Abandonment furnishes this proof; one cannot continue to live in and enjoy premises to any degree and simultaneously assert that he has been evicted.<sup>15</sup> To illustrate: X is the tenant of premises used as a pet store. In December, for several weeks and despite notice to the landlord, the premises are left without heat. As a result, X cannot carry on his business. X would be entitled to claim a constructive eviction and abandon the premises. The result would be different if the premises consisted of five rooms, only one of which was without heat, since in that situation the tenant could easily remain and carry on the business.

Upon eviction, whether actual or constructive, the relationship of landlord and tenant is terminated.<sup>16</sup> Naturally, the evicted tenant can refuse to pay further rent,<sup>17</sup> although he remains liable for rent accrued at the time of eviction. With respect to an actual eviction, no serious problems arise. However, practical problems are numerous when the question of a possible constructive eviction is considered. The attorney for the tenant seeking to make such a claim must exercise a great deal of caution. He must determine whether the factual situation presents "a wrongful act of the landlord's . . . which so interferes with his possession and enjoyment as to force him, acting as a reasonable man, to move from the premises."<sup>18</sup> If not, the tenant will find himself liable for rent and possibly without any dwelling. Therefore, the slum dweller, who suffers most from substandard housing, can least afford to contest a landlord's acts. The necessary expenses, moreover, are more than discouraging to him—they are prohibitive. Thus, it can easily be seen that the slum dweller is in dire need of outside assistance.

### *Prior Legislation*

Since 1860 various attempts were made in New York State to alleviate the problems arising from substandard conditions in tenements and multiple dwellings.<sup>19</sup> A series of Tenement House Laws was enacted between 1867 and 1901, each with the purpose of improving the cleanliness, ventilation and sanitation of tenements.<sup>20</sup> However, the discretionary powers delegated to the Board of Health and other agencies under these enactments generally resulted in lax enforcement. In 1901, the Tenement House Depart-

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<sup>14</sup> *Dyett v. Pendleton*, 8 Cow. 727 (N.Y. 1826).

<sup>15</sup> *City of New York v. Pike Realty Corp.*, 247 N.Y. 245, 160 N.E. 359 (1928).

<sup>16</sup> *Peerless Candy Co. v. Halbreich*, 125 Misc. 889, 213 N.Y. Supp. 49 (Sup. Ct. 1925).

<sup>17</sup> *Ibid.*

<sup>18</sup> WALSHE, PROPERTY § 188-a (2d ed. 1937).

<sup>19</sup> See 35-A MCKINNEY'S MULT. DWELL. LAW IX, XIV-XXI (1946).

<sup>20</sup> See 35-A MCKINNEY'S MULT. DWELL. LAW XIV-XVI (1946).

ment was created to remedy these abuses by a concentration of enforcement authority. Violations were made punishable by fine and/or imprisonment.<sup>21</sup>

As New York City's population steadily increased, with a concurrent development of exempted buildings, *i.e.*, buildings in which residents did not do their cooking upon the premises, a need was discerned for revision of the Tenement House Law.<sup>22</sup> This revision resulted in the enactment of the Multiple Dwelling Law.

### *Multiple Dwelling Law*

Enacted in 1929, and amended in 1946,<sup>23</sup> the Multiple Dwelling Law was designed to supersede the Tenement House Law in "cities with a population of eight hundred thousand or more."<sup>24</sup> Regulations were designed for the preservation of health, and the enactment of specific standards regarding local property became a matter of state concern. The constitutionality of state action in this area was soon upheld in *Adler v. Deegan*,<sup>25</sup> which determined that the statute was a general health law, and hence, a proper subject of the state's police power.

Section 2 of the Multiple Dwelling Law manifests an intention to alleviate some of the problems which tenants had, in the past, faced in their common-law relationship with the landlord. The section declares that overcrowding, inadequate provision for light and air, lack of protection against the dangers of fire, and improper sanitary facilities are a "menace to the health, safety, morals, welfare, and reasonable comfort of the citizens of the state. . . ."<sup>26</sup> This statute does not extend to all multiple dwellings<sup>27</sup>—it does not reach those constructed and lawfully occupied on or before April 18, 1929.<sup>28</sup> With respect to those dwellings which the law does affect, the goal expressly designated under section 2 has not been achieved in the thirty-six years since its enactment. Although detailed regulations are presented which, if followed, would have provided the tenant with assistance in the areas of fire protection,<sup>29</sup> overcrowding,<sup>30</sup> sanitation<sup>31</sup> and ventilation,<sup>32</sup> the remedies chosen have not been

<sup>21</sup> See 35-A MCKINNEY'S MULT. DWELL. LAW XVI (1946).

<sup>22</sup> 35-A MCKINNEY'S MULT. DWELL. LAW XVI-XVII (1946).

<sup>23</sup> The 1946 amendments were not substantive, but, in the main, were aimed at clarification and amplification.

<sup>24</sup> This figure was changed to five hundred thousand in 1950. N.Y. MULT. DWELL. LAW § 3(1).

<sup>25</sup> 251 N.Y. 467, 167 N.E. 705 (1929).

<sup>26</sup> N.Y. MULT. DWELL. LAW § 2.

<sup>27</sup> N.Y. MULT. DWELL. LAW § 4.

<sup>28</sup> N.Y. MULT. DWELL. LAW § 25.

<sup>29</sup> *E.g.*, N.Y. MULT. DWELL. LAW §§ 101-08, 141-52.

<sup>30</sup> N.Y. MULT. DWELL. LAW §§ 31, 309.

<sup>31</sup> *E.g.*, N.Y. MULT. DWELL. LAW §§ 115-17.

<sup>32</sup> *E.g.*, N.Y. MULT. DWELL. LAW §§ 32, 175.

applied in a manner calculated to achieve such benefits. Remedies can only be enforced by the designated municipal authorities,<sup>33</sup> and the tenant can in no way personally effectuate their enforcement.<sup>34</sup> At first glance, the penalty provisions might seem adequate. Section 304 provides civil and penal sanctions in the event that violations or notice of violations are disregarded by the landlord. Frequently, however, only minimal fines are assessed.<sup>35</sup> Consequently, the slum landlord is often willing to risk the slight penalty, rather than absorb the greater expense of extensive repairs. To this defect must be added the limited availability of official inspections, due to the undermanned and underfinanced nature of the enforcement agency.<sup>36</sup>

A 1962 amendment to Section 309 of the Multiple Dwelling Law provides one ultimate sanction which, if employed properly, could do much to solve those problems associated with the most run-down dwellings. The City of New York is empowered to make necessary repairs and then to recover the expenses from the tenant's rents.<sup>37</sup> It would seem, however, that one problem must be overcome before such a remedy will be effective. Money must be first appropriated by the city to cover the repair costs. Until the repairs are completed, it would seem that the expenditures would not be recoverable.<sup>38</sup> Thus, financial steps must first be taken, by a city already heavily burdened with expenditures, to assure these repairs. It can be reasonably contended, therefore, that prior to 1965, the Multiple Dwelling Law has been inadequate to meet the needs of the slum dweller.

#### *Real Property Actions and Proceedings Law—Section 755*

The frustration necessarily experienced by a tenant confronted with the inadequacy of both his living conditions and the proffered remedies has been somewhat mitigated by Section 755 of the Real

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<sup>33</sup> *E.g.*, in New York City, application and enforcement of the statute is the responsibility of the Department of Housing and Buildings. N.Y. CITY CHARTER ch. 26, § 643.

<sup>34</sup> See *City of New Rochelle v. Beckwith*, 268 N.Y. 315, 318, 197 N.E. 295 (1935).

<sup>35</sup> See generally Note, *Rent Withholding and the Improvement of Substandard Housing*, 53 CALIF. L. REV. 304, 318-19 (1965), and materials cited therein.

<sup>36</sup> *Id.* at 316-17.

<sup>37</sup> Another portion of this statute, § 309(5), provides for the placing of the building into receivership in the case of serious, non-corrected violations. In this situation, the receiver pays for the repairs out of the rents due. See generally Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801 (1965). It is stated therein that "the chief obstacles [to receivership statutes] are that the proceedings are too slow, usually taking a full year, and that the Department of Real Estate has failed to undertake repair of a sufficient number of buildings." *Id.* at 829.

<sup>38</sup> N.Y. MULT. DWELL. LAW § 309(3).

Property Actions and Proceedings Law. Under this section, if notice of a violation or nuisance has been served on a landlord by the proper city agency, and the violation or nuisance is, in the court's opinion, sufficient to constitute a constructive eviction, then, the court may grant a stay in any proceeding by the landlord against the tenant for non-payment of rent.<sup>39</sup> In order to take advantage of this stay, the tenant must pay into court an amount equal to the rent due, and must make additional payments as the rent accrues during the pendency of the stay. When the designated repairs have been made, the landlord becomes entitled to the court-held rent.<sup>40</sup>

Although this section appears to afford a tenant a sound legal basis for withholding rent, it must be remembered that the violation which is to serve as a defense must constitute a constructive eviction.<sup>41</sup> This standard is necessarily vague, and is, therefore, subject to varying interpretation. As a consequence, additional protection is needed to instill confidence in a tenant who feels he is entirely justified in withholding payment of rent. In like manner, there exists a pronounced need for an expansion of coverage to those areas wherein violation would not normally amount to a constructive eviction.

It should be re-emphasized at this juncture that there exists no concept of partial constructive eviction in this state. Although an attempt has been made to justify the withholding of rent on this basis, no legal recognition is given to any acts other than those which ultimately result in the tenant's abandonment of the premises.<sup>42</sup>

The effectiveness of the withholding of rent is also subject to question. In those instances where the owner is wealthy, repair work will probably be initiated to effect the return of the withheld rent. However, the speed with which such repairs are effected will depend, to a great extent, upon the speed with which the owner wishes to recover his rent. In the case of the owner whose non-rental income would not facilitate the payment of repair bills, is it not possible that his receipt of the rent would be the *sine qua non* of making repairs?

#### *New York Social Welfare Law—Section 143-b*

Section 143-b of the Social Welfare Law, otherwise known as the Spiegel Law, empowers welfare officials to withhold rental allowances from recipients dwelling in buildings which are im-

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<sup>39</sup> N.Y. RPAPL § 755(1).

<sup>40</sup> N.Y. RPAPL § 755(2).

<sup>41</sup> N.Y. RPAPL § 755(1).

<sup>42</sup> *Gombo v. Martise*, 44 Misc. 2d 239, 253 N.Y.S.2d 459 (Sup. Ct.), reversing 41 Misc. 2d 475, 246 N.Y.S.2d 750 (Civ. Ct. 1964).

paired by violations "dangerous, hazardous or detrimental to life or health."<sup>43</sup> These violations are a defense to any action brought by the landlord for non-payment of rent. The allowance for rent which is withheld is paid to the landlord only upon completion of the necessary repairs.<sup>44</sup> There is no necessity under this section to utilize any judicial facilities, since the determination of the existence of violations, as well as the decision to withhold the rent, is made by the welfare officials. Although some suggestions have been made which imply that the statute is unconstitutional, it would appear that it could be upheld on the basis that the state's police power extends to a requirement of minimum health and safety standards. Hence, the right of a landlord to evict a tenant for non-payment of rent may be temporarily extinguished through an exercise of state power.

Although this statute probably covers a majority of those affected by the 1963-64 rent strikes, *e.g.*, welfare recipients in Harlem, a need for a wider scope of coverage exists. All who are affected adversely by conditions dangerous to health or life, whether slum dweller or not, should be given the means to effect remedial action by the landlord. The deficiencies of the above laws were suddenly and dramatically crystallized by the New York rent strikes. As a result, the 1964 legislative session saw the introduction of nine separate bills designed to remedy the inadequacies of prior law. From these came the New York rent-strike legislation of 1965.

#### *1965 Rent Strike Legislation*

It is hereby found that there exists [*sic*] in the city of New York multiple dwellings which . . . endanger the life, health or safety of the occupants thereof. It is hereby further found that additional enforcement powers are necessary to compel the correction of such conditions and to increase the supply of adequate, safe and standard dwelling units, the shortage of which constitutes a public emergency and is contrary to the public welfare.<sup>45</sup>

In these words, the New York Legislature explicitly announced its purpose in enacting the first of two amendments which drastically alter the nature of the remedies available to a tenant subjected to substandard conditions.

#### *Amendment to the Real Property Actions and Proceedings Law*

Designed solely for multiple dwellings in New York City, Section 769 of the Real Property Actions and Proceedings Law

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<sup>43</sup> N.Y. SOC. WELFARE LAW § 143-b(2).

<sup>44</sup> N.Y. SOC. WELFARE LAW § 143-b(6).

<sup>45</sup> N.Y. Sess. Laws 1965, ch. 909, § 1.

designates the civil court as the appropriate forum in which to commence a special proceeding. Section 770 specifies the grounds upon which this proceeding may be based, and requires that at least one-third of the tenants of a multiple dwelling of six or more apartments join and maintain the proceeding. The section declares that the lack of heat, running water, or sewage disposal facilities, or the infestation of rodents, or "any other condition dangerous to life, health or safety,"<sup>46</sup> will be sufficient grounds upon which to base the proceeding. In addition, these violations must have existed for at least five days prior to commencement thereof.<sup>47</sup> Upon sufficient proof, the civil court will direct that rent, both accrued and accruing, be paid into court. An administrator may then be appointed by the court to effect the necessary repairs, utilizing the rent so deposited.

The question as to the scope of coverage of this provision appears to be open to judicial construction. The expressed legislative intent, in addition to the underlying stimulus presented by the New York rent strikes, reasonably leads to the conclusion that the amendment is directed only at slum conditions. However, the fact that an intent is shown to make such a restriction does not confine the coverage of the section to such conditions in slum dwellings; the statute itself is not so restricted. On the contrary, it appears that the luxury apartment may be included within the ambit of coverage whenever the enumerated violations exist therein. Dangerous conditions are not coexistent only with poverty; nor is wealth the sole guarantor of their absence. If it be granted that the loss of heat or other facility could be more serious in areas where living conditions are predominantly substandard, nevertheless, it can be seen that the presence of the violation and not the general nature of the building may be the criterion for allowing the petition.

Similarly, it would seem that the use of the words "exists in such multiple dwellings or in any part thereof"<sup>48</sup> would allow, or rather demand, an interpretation that it is not necessary that the one-third seeking the benefits of the statute be in some way presently and directly affected by a violation. Rather, keeping in mind that the violations must be dangerous to life and health, it would seem that the presence of violations in one apartment, a part of one apartment, or in a room unassociated with an apartment, may be sufficient. That this is not unreasonable can be demonstrated by the following example: X, a tenant in Y's fifteen-story, 100-apartment building, discovers the presence of rodents in his ground-floor apartment. Upon closer scrutiny, X realizes that the infestation is restricted to an unused bedroom. If, after

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<sup>46</sup> N.Y. RPAPL § 770.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

five days, the condition remains unrectified, he could join with his cotenants and commence the special proceeding. Moreover, it would seem that, if *X* were hesitant to antagonize the landlord, his cotenants themselves could join together and initiate the proceeding.

With respect to the scope of the statute, it should also be noted that despite the enumeration of the types of violation, arguments might nevertheless be made for the extension of coverage to facilities normally found only in non-slum dwellings. For example:

(1) *Elevator Service*—Though not a facility normally present in slum dwellings, it seems clear that, at one time or another, tenants of an elevator-serviced building might seek to utilize this statute upon the extended interruption of regular elevator service. To determine whether or not such a defect would fall within the scope of this legislation, it must be first decided whether the termination of such service can be construed as being dangerous to health and safety. Tenants could assert that an elevator is indispensable to health in that it results in the avoidance of over-exertion, and allows elderly people to freely and safely dwell in apartment buildings. However appealing and cogent these arguments might appear, it would seem that a court would not construe such a defect as included within the legislative intent. As indicated, the statute was designed in view of the substandard conditions in some areas. Its very introduction demonstrated that action was prompted by the pervasive existence of the conditions described in section 770. In any conflict between the declared legislative intent, with its silent foundation in the New York slum, and the broad wording of the statute, the former will probably prevail.

(2) *Landlord-Initiated Security Provisions*—Some tenants may argue that the lapse of existing security provisions or the total absence of them—housing police, elevator operators, doormen, closed circuit television—might present a basis for the employment of article 7-A. However, such arguments can be refuted when a common feature of all the statutorily-enumerated defects is noted. The statutory violations not only must be within the control of the owners, but also require no fortuitous circumstances, *e.g.*, the possible presence of a thief, to be of a nature dangerous to life or health. Maximum security from the effects of crime should not be deemed to be covered by this statute. On the other hand, judicial notice may be taken of the prevalence of crime in a certain area so that certain minimum security provisions, such as doors that lock properly and windows which can be fastened, could be deemed to be within the statute.<sup>49</sup>

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<sup>49</sup> It is also possible that these violations could provide a basis for claiming constructive eviction.

Certainly, a tenant, if his lease provides for such services, might in their absence sue for and receive an abatement of rent or an award for damages. A similar result could occur where such an agreement is implied from circumstances, *e.g.*, elevator service in operation on a regular basis at the time of signing the lease.

This amendment will probably be construed as being applicable to all multiple dwellings of six or more apartments, whether or not in slum areas, whenever violations exist which could reasonably be said to be dangerous to life and health in the light of those conditions which the legislature viewed in enacting this statute.

### *Procedure*

Once a group of tenants is satisfied that grounds exist under section 770, a proceeding may be commenced by the service of both a petition and a court-issued notice of petition upon the owner and each mortgagee and lienor of record.<sup>50</sup> This notice of petition will automatically issue provided that those items specified in section 772 are contained in the petition: (1) an allegation of sufficient grounds; (2) an allegation that at least one-third of the tenants have joined in the petition; (3) a brief description of the nature of the work required as well as an estimate of the costs of repair; (4) an allegation of the rents due from each petitioner monthly; and (5) a statement of the relief sought.

Once notice issues, both the petition and the notice are to be personally delivered to the last-registered owner of the multiple dwelling, and to all mortgagees and lienors of record.<sup>51</sup> If such service cannot be made within the city, service must be made by personal delivery to the managing agent of the building, and upon a mortgagee or lienor of record by means of registered mail, return receipt requested.<sup>52</sup> If these attempts at service, pursued with due diligence, prove unsuccessful, substituted service provisions, somewhat similar to those of CPLR 308(3), can be utilized:

service . . . shall be made by affixing a copy of the notice and petition upon a conspicuous part of the subject multiple dwelling; and in addition, within one day after such affixing, by sending a copy thereof by registered mail, return receipt requested, to the owner at the last address registered by him with the department of buildings or, in the absence of such registration, to the address set forth in the last recorded deed with respect to such premises.<sup>53</sup>

The service must be made from five to twelve days before the hearing; and the petition, notice and proof of service must be filed

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<sup>50</sup> N.Y. RPAPL § 771(3).

<sup>51</sup> *Ibid.*

<sup>52</sup> N.Y. RPAPL §§ 771(5)(a)(1), (5)(a)(2).

<sup>53</sup> N.Y. RPAPL § 771(5)(b).

within three days after service is made.<sup>54</sup> If an answer is desired, service must be made at least eight days before the date set for the hearing.<sup>55</sup>

There are three possible results in a proceeding under the new amendment:

(1) If the owner, mortgagee or lienor establishes a defense under section 775, or if the petitioners are unable to establish the allegations of the petition, the special proceeding will be dismissed.<sup>56</sup>

(2) If the petitioners establish their allegations but the owner, mortgagee, lienor or some other person with an interest in the property applies for permission to perform the repair work, the court, upon the posting of security, will postpone the entry of a final judgment calling into action the ultimate remedial machinery of the statute.<sup>57</sup>

(3) Absent (1) and (2) or upon a failure of repair work under (2), the court may order the appointment of an administrator to accomplish the needed repairs, or may undertake the supervision of such work itself.<sup>58</sup>

A dismissal of the complaint under (1) will result if it is established that the alleged violations do not exist or have been remedied, that they in fact were caused by the tenant(s), or that the owner or his representative has been prevented by any tenant, petitioner or non-petitioner, from entering to correct the violative conditions.<sup>59</sup>

If no defense is established, an application can be made to the court to allow the applicant to remove the violations. Such application will be granted if an ability to promptly and properly undertake the repairs is demonstrated, and if security is posted.<sup>60</sup> However, if the work is not carried out with due diligence, or if it is not completed within a time set by the court, then final judgment will be entered.<sup>61</sup>

Section 777 of the Real Property Actions and Proceedings Law effectively remedies the defects of prior rent-withholding legislation. Although the landlord may still perform the repair work himself, if he fails to do so within a court-determined time limit, the court will order it to be done for him. If a landlord has limited means, the continued collection of rent is especially beneficial.

If the party securing permission to repair is unable to, or is lax in pursuing repairs to completion, the court can appoint an administrator to effect the needed repairs.<sup>62</sup> The costs of such

<sup>54</sup> N.Y. RPAPL § 771(3).

<sup>55</sup> N.Y. RPAPL § 773.

<sup>56</sup> N.Y. RPAPL § 776(a).

<sup>57</sup> N.Y. RPAPL § 777(a).

<sup>58</sup> N.Y. RPAPL §§ 776(b), 777(b), (c).

<sup>59</sup> N.Y. RPAPL § 775.

<sup>60</sup> N.Y. RPAPL § 777(a).

<sup>61</sup> N.Y. RPAPL § 777(c).

<sup>62</sup> *Ibid.*

repairs shall be met by utilizing the security posted by the applicant, and, if this proves to be an insufficient amount, the court will order rents to be deposited to the extent of the deficiency. If the security should exceed the needed amount, the court will return the surplus.

When the allegations of the petition are established, and no application to repair has been made, the court will order the appointment of an administrator, as well as payment of rents into the court. The petitioners must pay into court the rents due as of the date of judgment, while non-petitioning tenants incur such obligation as of the date they are served with notice of such judgment. Further rent is to be deposited as it accrues. All the deposited rent will be utilized for repairs in accordance with the direction of the court. The surplus, if any, will be turned over to the one to whom the rent is normally paid.<sup>63</sup>

This statute provides the first coercive remedies directly enforceable by the tenant. Theoretically, therefore, a tenant no longer is compelled to live with dangerous violations because of inefficiency or laxity of the public authorities and/or inability on the part of the landlord. Whether or not this theory does achieve a practical reality will depend upon the ability of tenants to effectively join together and pursue their remedy.

#### *Multiple Dwelling Law—Section 302-a*

A somewhat more drastic remedy is afforded the resident of a multiple dwelling by Section 302-a of the Multiple Dwelling Law. This amendment is applicable to all dwellings containing three or more families living independently,<sup>64</sup> in cities with a population of two million or more.<sup>65</sup> The statute generally provides that the tenant may withhold rent in the case of serious violations.

A "rent impairing" violation is deemed to be one which in the opinion of the local enforcement agency "constitutes, or if not promptly corrected, will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof."<sup>66</sup> Although the question of what constitutes a serious violation is presently being answered by the local agencies, it is suggested that the word "serious" will be strictly construed by the courts in view of the drastic nature of the available remedy.

Unlike the amendment to the Real Property Actions and Proceedings Law,<sup>67</sup> the Multiple Dwelling Law does not require a special proceeding or judicial authorization. The statute is self-executing upon the satisfaction of two requirements: (1) the rec-

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<sup>63</sup> N.Y. RPAPL § 776(b).

<sup>64</sup> N.Y. MULT. DWELL. LAW § 4(7).

<sup>65</sup> N.Y. MULT. DWELL. LAW § 302-a(1).

<sup>66</sup> N.Y. MULT. DWELL. LAW § 302-a(2)(a).

<sup>67</sup> N.Y. RPAPL §§ 769-82.

ords of the proper department must show that a rent impairing violation exists and that notice has been given to the owner last registered with the department; (2) the violation must have remained unrepaired for six months subsequent to the giving of notice.<sup>68</sup> Upon satisfaction of these requirements, any resident upon whose premises the condition exists is empowered to withhold rent payments until the noticed defects have been corrected. If the defect does not exist in any particular residence, but rather, is found in commonly used parts of the building, then all the residents have such power. It should be emphasized that, contrary to the provisions of the Real Property Actions and Proceedings Law, this rent is not recoverable.<sup>69</sup> There is no joinder of one-third of the tenants required, and thus, independent action on the part of the residents is promoted. Finally, this amendment provides that in any action by the landlord based on the non-payment of rent, the uncorrected six-month existence of the violation is a defense, provided of course, that the owner has been properly notified. If the defendant-resident in any such action has caused the condition, or has prevented the owner or his agent from entering to remedy it, no right exists to withhold rent.<sup>70</sup>

It would seem that the extreme nature of this remedy, *i.e.*, the non-recoverability of the rent withheld, is somewhat mitigated by the six-month waiting period. Yet, it must be remembered that this enactment is quite revolutionary when contrasted with the remedies offered a tenant both at common law and under prior legislation. No eviction, either actual or constructive, is required. The tenant may remain in possession of the entire premises and still refuse to pay rent.

### *Conclusion*

Prompted by the recent New York rent strikes, and stirred by an awareness of their cause, the New York Legislature has enacted two amendments to secure the elimination of the most serious of existing substandard living conditions. Combining the aims and supplementing the remedies of prior enactments, the 1965 rent-strike legislation offers a program which embodies swiftness and, at least prospectively, efficiency. No longer must the tenant commit himself to the vagaries of "constructive eviction" in order to secure the betterment of his living conditions. Rather, he is now legislatively endowed with the personal right to a dwelling which does not pose a constant threat to his life, health or well being.

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<sup>68</sup> N.Y. MULT. DWELL. LAW § 302-a(3)(a).

<sup>69</sup> *Ibid.*

<sup>70</sup> N.Y. MULT. DWELL. LAW § 302-a(3)(b).