FOR WHOM "*BELL*" TOLLS: RENT ESCROW, WITHHOLDINGS, STRIKES, AND LANDLORD-TENANT REFORM

Brian G Gilmore[1]

I. INTRODUCTION

As the COVID-19 pandemic began, countless individuals were laid off from work and became immediately vulnerable to a possible eviction from their housing units.[2] Governors and leaders around the world instituted executive orders and policies to attempt to address the problem.[3] In the United States, the uncertainty of the future of the housing market was high.[4] Many tenants and tenant advocates began to primarily promote one strategy: rent strikes.[5]

"Tenant organizations in cities from Los Angeles to Chicago to Philadelphia" implemented efforts to organize rent strikes.[6] However, there was one notable difference with the COVID-19 rent strikes and ones that had previously occurred.[7] Rent strikes are usually invoked to force landlords to address maintenance issues or to protest high rent pricing.[8] However, these strikes were implemented when the effects of the COVID-19 pandemic arrived and were organized to force the government to provide economic

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[1] Senior Lecturer, University of Maryland, Law and Society Program. The author was formerly Associate Clinical Professor at Michigan State University College of Law and Director of the MSU Housing Law Clinic from 2010-2021. The author wishes to extend warm thanks to the following individuals for their assistance: Courtney Edwards, Ryan Gomez, Joshua Guerrero, Tedda Hughes, and Pedro Berlanga. The author dedicates this article to Willie E. Cook Jr., former Executive Director of the Neighborhood Legal Services Program and the lead counsel in the case discussed here, *Bell v. Tsintolas*.

[2] Natasha Lennard, *With Millions Unable to Pay for Housing Next Month, Organizers Plan the Largest Rent Strike in Nearly a Century*, THE INTERCEPT (Apr. 25, 2020, 6:00 AM), https://theintercept.com/2020/04/25/coronavirus-rent-strike-may/.

[3] Annie Nova, *Renters Are Still Protected from Eviction in These States and Cities*, CNBC (Nov. 12, 2021, 2:09 PM EST), https://www.cnbc.com/2021/11/12/these-are-the-states-and-cities-where-evictions-are-still-banned-.html.

[4] Lennard, *supra* note 2.

[5] *Id.*

[6] *Id.*

[7] Marissa J. Lang, *D.C. Tenants Plan Rent Strikes, Hoping for City's Help as Coronavirus Shutdown Continues*, WASH. POST (Apr. 30, 2020), https://www.washingtonpost.com/local/dc-rent-strike-coronavirus-tenants-shutdown/2020/04/30/d0a5a76c-8b03-11ea-8ac1-bfb250876b7a_story.html.

[8] Nigel Duara, *California's Rent Strike: Who Pays and how it Works*, ABC10 (Sept. 25, 2020, 4:45 PM PDT), https://www.abc10.com/article/news/politics/how-a-rent-strike-works/103-3b98e3fd-f4cd-473a-a1ba-4bb4f430897d.

relief to tenants.[9] Yet, the process remained the same.[10] Tenants collectively ceased to pay rent in mass to demand a resolution to an economic problem beyond their control.[11] A rent strike is a "last resort" in the struggle over rent and housing.[12] In fact, this tactic—usually implemented over conditions of a housing unit and is typically not the by-product of a global pandemic—is frequently used by tenants to achieve a more just and quicker result than entering into legal battles with landlords.[13]

Conceptually, rent strikes remain important because they are directly related to a broader and more important legal concept—rent escrow.[14] Rent escrow is when rent payments are placed in abeyance while a dispute over rental payments in a landlord-tenant relationship is ultimately resolved.[15] Rent is not paid to the landlord until the housing difficulties are resolved.[16] Escrow, in effect, is an individual tenant rent strike.[17]

One of the most common issues in landlord-tenant cases across the United States is a tenant withholding rent to their landlord due to the landlord's failure to maintain the property in a safe and sanitary manner as required under the law.[18] While withholding rent is a very common tactic by tenants, it is unclear if tenants understand the full ramifications of their decisions to withhold rent. Some tenants are desperate and frustrated, while others are likely seeking communication from their landlord—even if it is negative and potentially destructive to both parties.

In addition to tenants withholding rent payments to their landlords on their own volition, numerous jurisdictions[19] also have "escrow" laws and procedures for landlords and tenants that allow the rent payments to be temporarily placed in escrow while the dispute over alleged housing

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9 Lang, *supra* note 7.

10 Lennard, *supra* note 2.

11 *Id.*

12 *See id.* (addressing the reasons that tenants go on rent strike).

13 Marissa J. Lang, *Rent Strikes Grow in Popularity Among Tenants as Gentrification Drives up Rent in Cities like D.C.*, WASH. POST (June 9, 2018), https://www.washingtonpost.com/local/rent-strikes-grow-in-popularity-among-tenants-as-gentrification-drives-up-rents-in-cities-like-dc/2018/06/09/f953e0ca-6517-11e8-a768-ed043e33f1dc_story.html.

14 Eliza Berkon, *When Tenants Take on Landlords over Bad Conditions: A Rent-Strike Explainer*, NPR (Feb. 27, 2020), https://www.npr.org/local/305/2020/02/27/809935489/when-tenants-take-on-landlords-over-bad-conditions-a-rent-strike-explainer.

15 *Id.*

16 *See id.*

17 Rick Paulas, *Do Rent Strikes Actually Work?*, *Money*, VICE (July 13, 2018), https://www.vice.com/en/article/a3qg3k/do-rent-strikes-work.

18 *See* Mann v. Northgate Invs., Ltd. Liab. Corp., 5 N.E.3d 594 (Ohio 2014) (addressing a landlord-tenant dispute based on the landlord's failure to address property maintenance); *see also* Merrill v. Jansma, 86 P.3d 270 (Wyo. 2004) (addressing a landlord-tenant dispute based on the landlord's failure to address property maintenance).

19 *See infra* Figure 1.

conditions proceeds to finality.[20] The use of escrow to address housing conditions has become quite common since the late 1960's and early 70's.[21] Yet, during the COVID-19 pandemic, it became obvious that tenants and the public would benefit from a better system of rental housing governance. Defenses to alleged housing code violations were especially concerning during the COVID-19 pandemic.[22] As housing providers struggled to pay their own expenses, it was obvious that while the defense of housing code violations was still legally available, it was not a practical strategy.[23] Everyone involved in the housing market, whether there is a public health crisis or not, would benefit from a degree of clarity in the governance of properties.

This article attempts to propose a more progressive but reasonable approach to rent escrow processes notwithstanding the inherent problems with affordable rental housing in the United States. Using a District of Columbia case, *Bell v. Tsintolas*,[24] as a guide, this article identifies the pros and cons of withholding rent, the inherent inequities in landlord-tenant relationships, and a possible model for future legal disputes where tenants can exercise their legal rights when a landlord fails to abide by lease terms and other legal duties While this article focuses upon rent withholdings analyzed in various scenarios, the COVID-19 pandemic is also part of the discussion since housing became a prevalent issue as a result of the pandemic; ordinary rent withholding scenarios became even more complex.

This article will provide a description and the characteristics of typical scenarios involving rent escrow or rent withholding in Part II. Part III will examine the case, *Bell v. Tsintolas*, and other similar cases in the United States involving rent escrow payments. Next, Part IV will provide an overview of rent escrow around the country and the various ways in which states handle their rent escrow cases. Part V will discuss the pros and cons of the current system and new developments that are occurring across the United States, but which might occur. Finally, part V will draw conclusions based upon available evidence.

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20 Marcia Stewart, *How Rent Withholding Works*, NOLO, https://www.nolo.com/legal-encyclopedia/how-rent-withholding-works.html (last visited Sep. 11, 2021).

21 Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. Rev. 503 (1982).

22 *See* Manny Fernandez & Jennifer 8. Lee, *Struggling Landlords Leaving Repairs Undone*, N.Y. TIMES (July 14, 2009), https://www.nytimes.com/2009/07/15/nyregion/15buildings.html (explaining the health impacts of non-repairs to housing).

23 *Id*.

24 Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970).

II. A LEGAL HISTORY OF WITHHOLDING RENT

A. History

Escrow, in the legal world, is a complex term.[25] Its linguistic roots can be traced back to the sixteenth century from the French-Norman word, *escruoe*, which is defined as a scrap of paper delivered to a third-party to hold until certain terms are satisfied by the second party towards the first party.[26] Black's Law Dictionary defines escrow as:

> [A] legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee. . . ."[27]

The meaning of escrow and its operation was on display in an English case from 1860.[28] In that dispute, a "mine agent" sued a "coalmaster" for one hundred and fifty pounds for "breach of an alleged covenant" to serve in an "apprenticeship indenture."[29] While the coalmaster was initially held liable for the failure to serve in the apprenticeship, the successful appeal by the defendant coalmaster turned on the issue of escrow.[30] In sum, while the agreement to provide apprenticeship service to the mine agent was negotiated and conceived, the mine agent was required to provide "traveling expenses" to the coalmaster. [31]

This case defines the parameters of escrow, even though the escrow in this instance is not monetary but rather for services.[32] The parties had reached an agreement where the coalmaster was to provide the delivery of coal.[33] However, the contract for these services did not become enforceable or consummated until the mine agent provided travel expenses to the coalmaster.[34] The services, in effect, were held in escrow.[35]

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25 Beth Worthy, *Difficult Words and Terms in Legal Transcription*, GMR TRANSCRIPTION (July 24, 2008), https://www.gmrtranscription.com/blog/difficult-words-and-terms-in-legal-transcription.

26 *Escrow*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/escrow (last visited Feb. 4, 2022).

27 *Escrow*, BLACK LAW'S DICTIONARY (11th ed. 2019).

28 *Law Intelligence*, BIRMINGHAM DAILY POST, May 28, 1860, at 3.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Law Intelligence*, *supra* note 28.

35 *Id.*

Over the years, escrow has been described with a variety of descriptions, none of which use language that is much different. Most recently, the state of California defines "escrow" as follows:

> "Escrow" is any transaction in which one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or agent or employee of any of the latter.[36]

The California definition covers most scenarios anticipated by an escrow arrangement or dispute, especially legal and factual disputes that involve the rental of real property. However, this definition is formal in nature. The definition involves a third party who, for the purposes of this article, controls when the landlord gets rent payment.[37] In the scenario described in the introduction, tenants engaged in a rent strike might be using a third party to hold rent payments or the tenants may choose not to use a third party. The escrow here, during a global pandemic that has forced governments and businesses to close, might not actually even exist at all.

B. Rental Housing

The importance of escrow becomes clear when one examines the evolution of landlord-tenant law and disputes over the past sixty years. Typically, many landlord-tenant disputes begin in a similar manner.[38] A tenant complains to a landlord for months (or maybe a few weeks) about persistent housing issues. The problem might be a faulty toilet, a malfunctioning furnace in the winter, plaster and paint chips falling from the ceiling due to moisture, or mold that has suddenly appeared after part of the apartment flooded through no fault of the tenant. The housing provider does not respond quickly to telephone calls or written text messages from the tenant. Even worse, the landlord asserts that the problem is the fault of the tenant and the landlord will not address the repairs at the property.

The tenant, possessing few options or real strategies to obtain a response from the landlord, finally decides to withhold the next month's rental payment to compel the landlord to sue them in court for non-payment

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36 CAL. FIN. CODE § 17003 (West 2001).

37 *Id*.

38 The following hypothetical of the initiation of a landlord-tenant dispute is fictitiously created by the author based on his personal experience and research in the area of landlord-tenant disputes.

of rent. The tenant's goal is to appear before a judge in court to answer the allegations of non-payment of rent with a defense that the landlord is in violation of the lease and not entitled to a rental payment for failing to abide by the contractual terms of the lease. Due to the history of rental housing and the unequal relationship between the landlord and tenant, still today, it is one of the few options for tenants to resolve disputes over housing conditions in their units that are unsafe, unhealthy, unsanitary, or in violation of the law.[39] To properly frame the historical inequities in landlord-tenant relationships, a quick summary of the legal evolution of those relationships is necessary.

Landlord-tenant law in the United States has, from the beginning, been heavily influenced by English common law, until the court decision in *Sarah P. Ingalls & Another v. Warren Hobbs.*[40] This decision finally signaled that courts were beginning to consider rental housing laws differently than England's rigid rental housing laws.[41] In *Hobbs*, Sarah Ingalls sought to recover five hundred dollars from Warren Hobbs "for the use and occupation of a furnished dwelling house" in the summer of 1890.[42] Mr. Hobbs let the unit, but did not pay the agreed upon the amount to Ms. Ingalls.[43] At the time Mr. Hobbs arrived at the house he had let, it was "unfit for habitation."[44] Historically, court cases involving rental housing in England—and subsequently in the United States—were decided by applying the concept of *caveat emptor*.[45] In rental housing, the concept means the tenant accepts the property as they found it and accepts full responsibility for maintenance.[46]

In *Hobbs*, the court had to decide "whether there was an implied agreement on the part of the plaintiff that it was in a proper condition for immediate use as a dwelling house."[47] The court, recognized the common law doctrine of *caveat emptor*.[48] However, because of the circumstances in *Hobbs*, a short term rental for only a few days, it held that "a different rule should apply."[49] *Hobbs* turns on the particular facts of the case.[50] The court found that there was no fraud or any express covenant, but because of the temporary nature of the transaction, the doctrine of *caveat emptor* did not apply.[51]

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39 *See Habitability and Repairs*, S.F. TENANTS UNION (Oct. 2020), https://sftu.org/repairs/.
40 Ingalls v. Hobbs, 31 N.E. 286 (Mass. 1892).
41 *Id.* at 286.
42 *Id.*
43 *Id.*
44 *Id.*
45 *Id.*
46 *The Doctrine of Caveat Emptor Means*, UPCOUNSEL, https://www.upcounsel.com/the-doctrine-of-caveat-emptor-means (last visited Sept. 12, 2021).
47 *Ingalls*, 31 N.E. at 286.
48 *Id.*
49 *Id.*
50 *Id.*
51 *Id.*

While *Hobbs* did not result in an immediate and complete rejection of the common law doctrine of *caveat emptor*, it was an indication that courts might be willing to examine facts closely and consider implied terms in lease agreements.[52] However, tenants would need much more intervention by court systems to impact hundreds of years of legal jurisprudence favoring landlords.

In 1933, in the case of *Lawler v. Capital City*, it was apparent courts were still quite reluctant to deviate from the "as is" principle from the *caveat emptor* doctrine.[53] *Lawler* is a commercial case, but it still maintains influence because it defines what would be needed to move beyond the old doctrine.[54] Rentals were subject to "no implied warranty by the landlord that the house is safe; or well built; or reasonably fit for the occupancy intended."[55] In addition, "a tenant is a purchaser of an estate in the property he rents."[56] Because of the holding in the case, property law continued to govern relationships between landlords and tenants and not contract law.[57]

Use of the phrase "implied warranty" did, in fact, define for tenants exactly what was missing from these relationships.[58] However, it still advanced the concept of "as is" leases versus leases where there is an implied covenant of safety.[59] "As is" leases did not expressly obligate landlords to maintain housing units in safe and sanitary conditions, and there was no implied warranty of habitability either.[60] What then was necessary to alter the decisions of the courts and to address landlord-tenant disputes in a manner that represented a modern view of housing law? What ultimately leads to the decision in *Bell*[61] and the growing importance of escrow conceptually in landlord-tenant law?

First, the 1960s experienced an upsurge in tenant activism and organizing around these issues.[62] These issues were front and center in the public discourse along with equal rights for Black people and women, as well as poverty issues.[63]

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52 *See generally id.*
53 Lawler v. Cap. City Life Ins. Co., 628 F.2d 438 (D.C. Cir. 1933).
54 *Id.* at 439.
55 *Id.*
56 *Id.*
57 *Id.*
58 *Id.*
59 *Lawler*, 628 F.2d at 439.
60 Ingalls v. Hobbs, 31 N.E. 286 (Mass. 1892).
61 Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970).
62 Tova Indritz, *The Tenants' Rights Movement*, 1 N.M. L. Rev. 1 (1971).
63 *The Civil Rights Movement and the Second Reconstruction, 1945-1968*, HIST., ART, & ARCHIVES, U.S. HOUSE OF REPRESENTATIVES, https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Keeping-the-Faith/Civil-Rights-Movement/ (last visited Feb. 4, 2022).

Second, contract law and how it bound the parties became more important, especially the concept of implied warranty.[64] While contract law had been developing for decades, its use to decide housing cases and regulate housing had been limited before the 1960s to very specific scenarios.[65] Landlord-tenant agreements passing into the modern era, where the cases would focus on mutual obligations and contract law, remained at a distance until the 1960s.

III. THE CONTEXT OF WITHHOLDING RENT

Before discussing the seminal case of *Bell v. Tsintolas*,[66] its effects on the use of escrow, and how courts would interpret escrow, it is important to expand further into the legal principles which make *Bell* and escrow relevant in landlord-tenant cases.

A. Implied Warranty of Habitability

In 1923, in the English case of *Collins v. Hopkins*,[67] the issue of the implied warranty of habitability was discussed and applied.[68] That case relied upon another English case, *Smith v. Marrable*, from 1843.[69] In *Marrable*, the court held that there is an "implied condition" of habitability when the unit is a "furnished house" for "immediate occupancy."[70] While continuing to recognize the doctrine of *caveat emptor*, the court was willing to adopt this limited deviation from *caveat emptor* in the case of a short-term rental with furnishings.[71] This is consistent with the 1892 holding in *Ingalls & Another v. Warren Hobbs* in the United States.[72]

However, where English and Canadian courts began to endorse and expand the doctrine of implied warranty of habitability, courts in the United States remained reluctant to change positions in landlord-tenant matter and even resisted obligating landlords to be responsible for the units they lease.[73] The case of *Green v. Redding*[74] was decided in California at the same time as

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64 *See* discussion regarding the implied warranty concept *infra* Part II(A); Indritz, *supra* note 62.
65 Indritz, *supra* note 62.
66 *Bell*, 430 F.2d 474.
67 Collins v. Hopkins, [1923] 2 (KB) 617.
68 *Implied Warranty of Habitability of a Furnished House*, 37 HARV. L. REV. 896, 897 (1924).
69 *Id.*
70 Smith v. Marrable (1843) 152 Eng. Rep. 693, 11 M & W 6.
71 *Id.*
72 Ingalls v. Hobbs, 31 N.E. 286 (1892).
73 *Implied Warranty of Habitability of a Furnished House*, *supra* note 68.
74 Green v. Redding, 28 P. 599 (Cal. 1891).

Hobbs;[75] however, *Green* shows the resistance to expand the doctrine of implied warranty of habitability.[76]

Green was an action for "recovery of [four hundred dollars] for rent claimed to be due by virtue of a written lease of a 'residence and premises, including the furniture . . . in the city of San Francisco . . . for the terms of six months.'"[77] The tenant, upon delivery of the unit, observed the "premises . . . in an untenantable condition . . . unfit for the occupation of the defendant and his family" and that the unit was "filthy from want of care upon the part of the landlord, and unsafe."[78] While the landlord surrendered the property at the time of the execution and delivery, the unit was not ready to be resided in by the tenant.[79] Nevertheless, the district court found in favor of the landlord in the dispute—essentially upholding the long-established *caveat emptor* or "as is" doctrine.[80]

On appeal, the tenant argued that:

> It is the duty of the landlord, in all cases where he rents such premises as here involved, to see to it at the peril of a rescission of a contract of lease that the premises shall be clean and safe to live in, notwithstanding the tenant may not have insisted, as a careful man would, as a condition precedent to entering into the lease. . . .[81]

These arguments were outright rejected by the court.[82] The court reasoned that to hold otherwise would be to shift the burden of protecting the family of a tenant to landlords—something the court was not prepared to do in that case and something courts rarely did in the history of landlord-tenant disputes.[83]

B. From Pines to Javins

Eventually, courts began to transition to a different view on implied warranties in housing and this was important for the evolution of the escrow concept in rental housing.[84] The first noteworthy case regarding the implied warranty of habitability emerged in *Pines v. Perssion.*[85] *Pines* is a Wisconsin

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75 *Ingalls*, 31 N.E. 286.
76 *Green*, 28 P. 599.
77 *Id.* at 549.
78 *Id.*
79 *Id.*
80 *Id.* at 600.
81 *Id.* at 599-600.
82 *Green*, 28 P. at 599-600.
83 *Id.* at 600.
84 *See* Pines v. Perssion, 111 N.W.2d 409 (Wis. 1961) (illustrating the continued evolution of the concept of escrow).
85 *Id.* at 412.

landlord-tenant case brought by several students against their landlord "to recover the sum of $699.99, which was deposited by plaintiffs with defendant for the fulfillment of a lease, plus the sum of $137.76 for the labor plaintiffs performed on the leased premises."[86]

The plaintiffs brought action because when they took possession of the unit, it was in a "filthy state . . . lacking in student furnishings."[87] In addition, the students had to clean the house themselves, paint, and eventually requested an inspection of the house from the Madison Building Department.[88] The inspection revealed multiple code violations.[89] The students vacated the unit that same week due to the landlord's failure to provide a habitable unit.[90] The court summarized its findings as follows:

> The evidence clearly showed that the implied warranty of habitability was breached. Respondents' covenant to pay rent and appellant's covenant to provide a habitable house were mutually dependent, and thus a breach of the latter by appellant relieved respondents of any liability under the former.[91]

In *Pines*, the unit was unfurnished; however, the parties had contracted for a furnished unit.[92] By relieving the students of their rental obligations, the court linked the obligations to provide a habitable unit to rental payments.[93] In the end, the court ruled that the contract (i.e., the lease) between the parties lacked consideration.[94]

Pines is discussed in the most influential implied warranty of habitability case, *Javins v. First National Realty*.[95] There is no other case that defines the doctrine more definitively. *Javins* involved a multi-unit apartment complex with over fifteen hundred housing code violations in various apartments with multiple defendant-tenants.[96] At trial, judgment was rendered against all the defendants.[97]

The defendants all had been sued for non-payment of rent and each of them sought to present evidence of housing code violations as reasons for not paying the rent.[98] In maintaining basic precedent at the time, the court denied

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86 *Id*. at 409.
87 *Id*. at 410.
88 *Id*. at 412.
89 *Id*.
90 *Pines*, 111 N.W.2d. at 412.
91 *Id*. at 413.
92 *Id*. at 410-11.
93 *Id*.
94 *Id*.
95 Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970).
96 *Id*. at 1073.
97 *Id*.
98 *Id*.

this opportunity to the defendants, rendered judgment in favor of the landlords, and the tenants appealed.[99]

The tenants were being sued by the property owners, Ethel Javins, Rudolph Saunders, Stanley Gross, and Gladys Grant.[100] The tenants had all "refused to pay their rent because of terrible conditions" in the complex.[101] The violations the tenants had evidence of and that they sought to present included "mouse feces, dead mice," and "roaches."[102] After losing at the trial court, the tenants appealed to the D.C. Court of Appeals and had achieved no better result. [103]

The D.C. Court of Appeals, *inter alia*, held that if housing code violations occur after the parties enter into a lease, these violations do not result in a void and unenforceable lease.[104] In addition, the Court held that the housing code violations of the District of Columbia imposed no contractual duty between the landlord and tenant for the landlord to comply with the code.[105] Following the disappointing affirmation of the *Javins'* decisions, the cases were appealed and eventually heard before the United States Court of Appeals for the District of Columbia.[106]

Javins would ultimately determine the future of tenants' rights in the Landlord-Tenant Branch of the Court of General Sessions in the District of Columbia.[107] As the Court stated from the very beginning of the decision in *Javins*, "these cases present the question whether housing code violations which arise during the term of a lease have any effect upon the tenant's obligation to pay rent."[108] This was the fundamental dilemma facing tenants dating back decades in the court.

While *Javins* discussed numerous important issues, the key legal concept that the court ultimately decided is now known as an implied warranty of habitability in rental housing.[109] Strangely enough, the phrase "implied warranty of habitability" does not appear in any of the answers at the trial level filed by the four defendants in the *Javins'* cases.[110] Within the

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99 *Id.*

100 *Id.*

101 Richard H. Chused, Saunders *(A.K.A. Javins)* v. First National Realty Corporation, 11 GEO. J. ON POVERTY L. & POL'Y 191, 192 (2004).

102 *Id.*

103 *Javins*, 428 F.2d at 1072.

104 *Id.* at 1081.

105 *Id.* at 1082.

106 *Id.*

107 *Id.*

108 *Id.* at 1072.

109 *Javins*, 428 F.2d at 1073.

110 *See generally* Richard H. Chused, *Contemporary Dilemmas of the Javins Defense: A Note on the Need for Procedural Reform in Landlord-Tenant Law*, 67 GEO. L.J. 1385, 1388 (1979) (noting that the court ordered a new trial in which the implied warranty defense could be raised).

defendant's individual answers there is a singular focus on the concept of habitability as a strategic approach.[111]

The judge who would ultimately draft the decision in the *Javins'* cases was again the legendary Justice J. Skelly Wright.[112] However, it is more appropriate to discuss Justice Wright in the historical context of *Javins*.

J. Skelly Wright was born in New Orleans in 1911 and was a 1934 graduate of the Loyola Law School.[113] After serving as an Assistant United States Attorney in New Orleans, President Harry Truman appointed Wright as the United States Attorney for New Orleans in 1948.[114] Just one year later, Truman appointed Wright to the United States District Court in New Orleans.[115]

Eventually, President John F. Kennedy appointed Wright to the United States Court of Appeals for the District of Columbia Circuit[116] where his legal opinions and reputation for enforcing equal justice for the poor continued to evolve. One of the most important decisions he wrote was *Javins*, which was decided on May 7, 1970.[117] The decision set the tone from the beginning that fundamental legal concepts such as contract law and well-accepted consumer concepts such as warranties were enforceable in landlord-tenant agreements.[118] Wright ruled that there is "a warranty of habitability" in rental housing and it is "measured by the standards set out in the Housing Regulations for the District of Columbia" which "is implied by operation of law into leases of urban dwelling units covered by those Regulations. . . ."[119]

Judge Wright stated that while landlord-tenant relationships are traditionally judged in the context of feudal property law, a tenant in the modern age is far more interested in the overall package of services they received by entering into the lease.[120] This includes shelter, but also "adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance."[121] This *warranty of habitability* that Wright identified is "implied into all contracts for urban dwellings."[122]

The *Javins* decision single-handedly transformed landlord-tenant law in not only the District of Columbia, but the entire country. The case also

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111 *See generally id.*
112 *Javins*, 428 F.2d 1071.
113 Marjorie Hunter, *Judge J. Skelly Wright, Segregation Foe, Dies at 77*, N.Y. TIMES, Aug. 8, 1988, at D10.
114 *Id.*
115 *Id.*
116 *Id.*
117 *See Javins*, 428 F.2d 1071.
118 *See id.* (addressing the expansion of the use of contract principles in rental agreements).
119 *Id.* at 1082.
120 *Id.* at 1074.
121 *Id.*
122 *Id.* at 1080.

indirectly enabled the holding and the law in *Bell*[123] as well. There was no way for these rent withholding and rent escrow concepts to develop and evolve without *Javins*. By coupling the obligations to pay rent with the contractual obligations of the landlord to provide a safe and sanitary apartment that satisfies the local housing code, it completely alters landlord-tenant law.

As the *Pines*[124] court stressed, if the landlord is not in compliance with the contract, is there actual consideration for the rent? The concept of rent escrow and even the strategy for withholding rent became part of the landlord-tenant daily struggle because the landlord's violation of the contract resulted in a lack of consideration for the monetary funds. However, despite the simplicity of the concept, the implementation of rent escrow, is much more complex.

IV. THE LITIGATION OF WITHHOLDING RENT: *BELL V. TSINTOLAS REALTY CO.*

Tsintolas Real Estate was owned and operated by Helen and Demetrios Tsintolas, and has been doing business in Washington D.C. for over sixty years.[125] According to some company records from 1952, Tsintolas Realty purchased a property at 1337 Fairmont Street N.W.[126] A few years later, on December 16, 1957, the company offices were robbed.[127] According to an account in the Washington Post, Helen Tsintolas was secretary-treasurer of the firm owned by her husband, Demetrios, and was threatened with a small black pistol by a man wearing dark rimmed glasses.[128] The robbery suspect stole an estimated three hundred dollars.[129]

Many years later, Tsintolas Realty remained in business and became party to of one of the more important cases in the United States involving escrow laws, escrow systems, and other related matters within landlord-tenant relationships.[130] Today the case is known as *Bell v. Tsintolas*.[131] It is a landmark case from the U.S. Court of Appeals that established procedural rights for tenants in landlord-tenant proceedings that tenants had never previously been able to access.[132] It is the first case in the District of

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123 Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970).

124 Pines v. Perssion, 111 N.W.2d 409 (Wis. 1961).

125 T.R. Goldman, *The Suprising History of One DC Row House*, WASHINGTONIAN (Apr. 19, 2016), https://www.washingtonian.com/2016/04/19/surprising-history-one-dc-rowhouse/.

126 *Id.*

127 *Id.*

128 *Id.*

129 *Id.*

130 *Id.*

131 Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970).

132 *See id.* (recognizing the procedural rights of tenants).

Columbia to find that protective orders (i.e., rent escrow orders) may be issued in the landlord-tenant context.[133]

Bell challenged the "constitutionality of payment of money into the court" in landlord-tenant cases.[134] At the time of the case, landlord-tenant cases in the District Columbia used rent escrow in proceedings through a system of protective orders; *Bell* sought to change "the whole notion of protective orders."[135]

Bell began like thousands of landlord-tenant cases that year.[136] It proceeded through the local legal system from a simple lawsuit for non-payment of rent due to housing code violations.[137] As expected, an appeal was made at the United States Court of Appeals for the District of Columbia regarding "motions for stay of orders of the Landlord-Tenant Branch of the District of Columbia Court of General Sessions."[138] There were two cases—*Bell v. Tsintolas Realty Company* and *Coates v. Ruppert Real Estate Company*.[139] Although the issue in *Bell*[140] appears simple in nature, the legal question presented and the intertwined periphery matters are complex.

Bell presented to the U.S. Court of Appeals, an issue that occurred regularly in the Landlord-Tenant Branch of the Court of General Sessions.[141] Specifically, the case concerned whether tenants would be required to pay their rent into the registry of the court while the lawsuit proceeded through the system.[142] It was an issue of paramount importance since indigent tenants appearing before the court routinely requested permission to proceed without payment of court costs.[143] If the court required the tenants to not only pay future rents into the court but also rent allegedly owed, such a requirement would act as a bond requirement and many tenants would not be able to present their defenses and claims to the court.[144]

The justice who drafted the opinion in *Bell* was Justice J. Skelly Wright who had also written the opinion in the *Javins* case.[145] *Bell*, as already stated, shares a strong relationship to *Javins* in terms of the legal issues that were

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133 *Id.*

134 Interview with Willie E. Cook, Jr. in East Lansing, Mich. (Feb. 2006).

135 *Id.*

136 *Bell*, 430 F.2d at 479.

137 *Id.*

138 *Id.* at 476.

139 *Id.* at 479.

140 *Id.* at 474.

141 *Id.* at 476.

142 *Bell*, 430 F.2d at 480.

143 This procedure is known as "Informa Pauperis" in the court system that is Latin for "in the form of a pauper." *Definitions for In Forma Pauperis*, DEFINITIONS, https://www.definitions.net/definition/in%20forma%20pauperis (last visited Feb. 9, 2022). It allows the party to proceed without payment of court costs. *Id.*

144 *Bell*, 430 F.2d at 460, 480.

145 Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1072 (D.C. Cir. 1970); *Bell*, 430 F.2d at 477.

before the Court.[146] *Bell* is procedural in nature, but is essentially about access to the judicial system for the indigent.[147] If one couples *Bell* with the legal reasoning in *Javins* it is easy to understand.

The obligation to pay rent is directly related to the landlord's contractual obligations.[148] If there is a dispute over the rental payments, they are related to the conditions of the apartment and the landlord not complying with his obligations under the law.[149] Any rent not yet paid is in dispute.[150] Future rents might also be in dispute but these future rents under the doctrine established by *Bell* will be paid into escrow pending adjudication of the case.[151] The court stated:

> We conclude that, although the court may, in the exercise of its equitable jurisdiction, order that future rent be paid into the registry of the court as it becomes due during the pendency of the litigation, such prepayment is not favored and should be ordered only in limited circumstances, only on motion of the landlord, and only after notice and opportunity for a hearing on such a motion.[152]

Wright stated that the payments into the court registry formed a "protective purpose" that would assist both the tenant and landlord. [153] The payments should only be made when the tenant had requested a jury trial or "asserted a defense based upon violations of the housing code."[154] Wright also made it clear future payments should only have to be paid into the court registry if the landlord demonstrated a need.[155] Additionally, the court could order an amount less than the be paid if the housing unit contained violations of the housing code.[156] This last point was extremely important to tenants in landlord-tenant actions. From the very beginning, a tenant could begin to present evidence to the court that the landlord was violating the law in their landlord-tenant relationship.[157]

As a result of the *Bell* case, a standard and equitable procedure was established in landlord-tenant cases in the District of Columbia.[158] If a tenant

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146 *See* 430 F.2d 474, 477 (D.C. Cir. 1970) (expanding the rights of tenants like *Javins* court did).

147 *See id.* (noting specifically that indigent parties did not always have to pay the court prior to proceeding).

148 *Id*. at 481.

149 *Id*. at 482.

150 *Id*.

151 *Id.* at 479.

152 *Bell*, 430 F.2d at 479.

153 *Id.* at 483.

154 *Id.*

155 *Id*.

156 *Id*. at 484.

157 *Id*.

158 *Bell*, 430 F.2d at 484.

alleged that there are housing code violations and the landlord requested a protective order where the rent would be paid into the court registry, the court could order a *Bell* hearing.[159] This hearing would address what the rental payments the tenant would have to pay during the time the case was adjudicated.[160]

While the litigation would resolve the case itself (i.e., whether the tenant owed any rent and if so, what amount was owed), the *Bell* hearing would consider any existing housing code violations and the court would set a rental amount to be paid in escrow.[161] The tenant would be required to make monthly rental payments into the court registry rather than directly to the landlord.[162] If there were housing code violations, the landlord would be required to begin to make repairs.[163]

This process and procedure was demonstrated in *Haynes v. Logan*.[164] In *Haynes*, Logan (the landlord) sued Haynes (the tenant) for nonpayment of rent for the months of November 1989 through February 1990.[165] The tenant appeared and contested the allegations by alleging housing code violations as the reason for non-payment.[166] The landlord requested a protective order which would require the tenant to make future rental payments into the court registry during litigation.[167] The purpose of the *Bell* hearing is "to determine whether these allegations justified setting the protective order payments below the rent level."[168] The court eventually convened and conducted a hearing.[169] The court set the protective order at the full rent value of four hundred and fifty dollars per month—meaning there were no repair issues ignored by the landlord.[170]

This process, established by the *Bell* case, is one of the more sophisticated and orderly protective order processes involving the withholding of rent. Rent in escrow takes on the true meaning of escrow in this instance.[171] By accepting court payments for rent into the court registry while the case is adjudicated, it focuses the case upon the disputed amount and the parties are protected by the escrow order.[172] Evidence of housing code violations can be presented to the court almost immediately.

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159 *Id.* at 479.
160 *Id.*
161 *Id.*
162 *Id.*
163 *Id.*
164 Haynes v. Logan, 600 A.2d 1074 (D.C. 1991).
165 *Id.* at 1075.
166 *Id.*
167 *Id.*
168 *Id.*
169 *Id.*
170 *Haynes*, 600 A.2d at 1075.
171 *Id.*
172 *Id.*

V. STATE ESCROW AND RENT WITHHOLDING LEGAL AND STATUTORY GUIDELINES

A. Court Escrow

Various states across the United States recognize the escrowing of rent while a case adjudicates through the legal system.[173] There are a variety of ways of providing this function and procedure to tenants and litigants. Yet, as can be seen by the chart below, the majority of state have some provision addressing the escrowing of rent. Many states have a statute that specifically addresses the issue of how to use rent escrow.[174] Some states have cases, rather than statutes, that have established some procedure and precedent to follow.[175]

This reflects the growth of landlord-tenant law from an "as-is" model to one that is based upon not just property law, but contract law as well. The lease between the party is a binding contract for all parties.[176] Additionally, because of the evolution of implied warranty of habitability standards in many states, a state's housing code is an additional source of protections that courts will consider when deciding cases.

Of the fifty states and the District of Columbia, fifteen states have case law to support how their state handles rent escrow issues that arise.[177] Four states have no provisions for handling escrow matters in landlord-tenant disputes.[178] The vast majority have statutes in place that address the issue of rent payments into the court registry while a case is pending.[179] For most of these states, the escrow arrangement into the court is triggered when a tenant pleads a counterclaim, or the tenant contests the rental payment.[180] As appropriate under the *Javins* doctrine, rent obligations and the obligations of landlords under contract (i.e., leases) are mutual obligations.[181] The failure of a landlord to comply with the housing code of a jurisdiction in where the property is located could place rental obligations into question.[182]

Yet, it is not clear in all cases if the *Javins*[183] doctrine has successfully evolved into the rent escrow approach all of the time. For example, in Illinois,

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173 *See infra* Figure 1.
174 *See infra* Figure 1.
175 *See infra* Figure 1.
176 *See generally Contract*, CORNELL L. SCH., https://www.law.cornell.edu/wex/contract (last visited Feb. 4, 2022).
177 *See infra* Figure 1.
178 *See infra* Figure 1.
179 *See infra* Figure 1.
180 *See infra* Figure 1.
181 *See Javins*, 428 F.2d 1071 (identifying the mutual obligations created by a tenant-landlord relationship).
182 *Id.*
183 *Id.*

a 1958 case, *Lipkin v. Burnstein* continues to influence how the law in Illinois is applied in landlord-tenant matter.[184] In *Lipkin*, a case that precedes the many changes in the law to come, a tenant was not relieved of any obligation to pay rent.[185] Some states such as Oklahoma and North Dakota have specific laws that justify the use of deduct and repair in their landlord-tenant relationships.[186] Figure 1 lists each state and the status of escrow.[187]

B. Escrow and Repair

Since the period in landlord-tenant legal practice when tenants gained some procedural rights, the effectiveness of rent withholding has been a topic of discussion. In April 1969, Peter Abrahams was one of the first observers to write in detail about the pros and cons of rent withholding in its various capacities.[188] It is instructive for considering options for a new system. Abrahams explains how in the 1950s jurisdictions were enacting rent withholding laws.[189] California, Montana, South Dakota, North Dakota, and Oklahoma all had such statutes.[190] Abrahams also noted that these laws regarding rent escrow did not truly solve the problem of repairs versus rent—the two key components of any lease.[191]

According to Abrahams, such laws "are of little value to the slum tenant."[192] While they do require a "landlord to deliver the premises in a condition fit for human occupancy and to repair all subsequent dilapidations," the law at the time also allowed landlords and tenants to agree to shift the "repair burden" onto the tenant.[193] Low income or "slum" tenants have few options in housing and no leverage to negotiate such provisions, according to Abraham.[194] The landlord can easily insist that the tenant accept these conditions or remain without shelter.[195]

The scenario, described by Abrahams, was likely prevalent though there is no numerical evidence of how many lease situations had such unequal arrangements. Considering the number of leases across the country and the numbers of jurisdictions it is impossible to get an accurate measure.

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184 *See* Lipkin v. Burnstine, 152 N.E.2d. 745 (Ill. App. Ct. 1958) (finding that the tenant was still obligated to pay rent).

185 *Id.* at 751.

186 *See infra* Figure 1; N.D. CENT. CODE § 47-16-13 (2022); OKLA. STAT. tit. 41, § 121 (2022).

187 *See infra* Figure 1.

188 *See* Peter Abrahams, *Rent Withholding: A New Approach to Landlord-Tenant Problems*, 2 LOY. L.A. L. REV. 105 (1969).

189 *Id.* at 107.

190 *Id.*

191 *Id.* at 120.

192 *Id.* at 107.

193 *Id.*

194 Abrahams, *supra* note 188, at 106.

195 *Id.* at 108.

However, the law at the time was much clearer on this issue of unequal arrangements.

In numerous cases, the courts did not prohibit these arrangements between a landlord and tenant, especially when some kind of clause was included in the lease contract between the parties.[196] In *Bakersfield Laundry Association v. Rubin,* a court interpreted the escrow law in California. [197] In that case, there was just such a clause in the lease agreement that "[t]he [l]essee has inspected the above described premises, is thoroughly familiar with the condition thereof, and accepts the same in such condition and will maintain the same in the condition that said premises now are except for damages caused by the elements, fire, or earthquake."[198]

At the time of the *Bakersfield* case, California's withholding law allowed a tenant to withhold one month's rent, but only one month's rent.[199] In addition, the tenant could also vacate if notice of the repair issue was provided and there was no action taken by the landlord.[200] However, the options provided under the statue are narrow, and not all tenants are able to vacate and find new housing.

California was not the only state with a law with such narrow provisions.[201] Other states such as North Dakota, South Dakota, and Oklahoma had withholding laws, but the laws focused upon repairs in lieu of rent withholding.[202] Instead of rent withholding for failure to complete repairs, the laws seem to act more in the manner of deducting the costs of repair from the normal rent payment.[203] The "deduct and repair" rights of tenants has been written by legislators and interpreted in various manners by state court.[204] Perhaps this simple act by tenants is justification by itself for a more uniform set of laws nationwide for tenants in rental housing.

The Uniform Residential Landlord-Tenant Act ("URTLA") is an important source of support for this area of law in the courts.[205] However, it also can be viewed as a barrier to more expansive reform suggested by many scholars and stakeholders and proposed by this article on this issue.[206] Nevertheless, the URTLA was drafted in 1972 and has been adopted by

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196 *Id*.

197 Bakersfield Laundry Ass'n v. Rubin, 280 P.2d 921 (Cal. App. Dep't Super. Ct. 1955).

198 *Id*. at 922.

199 Abrahams, *supra* note 188, at 107.

200 *Id*. at 108.

201 *See id.* at 107-08 (discussing the limits found in the California provisions).

202 *Id*. at 109.

203 *Id*.

204 *See* Ann O'Connell, *State Laws on Rent Withholding and Repair and Deduct Remedies*, NOLO (Jan. 26, 2022), https://www.nolo.com/legal-encyclopedia/state-laws-on-rent-withholding-and-repair-and-deduct-remedies.html.

205 *The Uniform Residential Landlord and Tenant Act: Facilitation of or Impediment to Reform Favorable to the Tenant?*, 15 WM. & MARY L. REV. 845 (1974).

206 *Id*. at 846.

twenty-one states at the present time.[207] It is "not a law, but rather a proposal to the states."[208] There was—and is—no federal law or even sentiment that all of the states have adopted.[209] This includes most aspects of landlord-tenant relationships including standards on rent withholding, escrow, deduct and repair rights, and procedure.

The Michigan case, *Anchor Inn of Michigan v. Knopman*, is an example of where the law provides the right of a tenant to repair and deduct due to the failure of the landlord to make repairs.[210] The court held that "where the landlord has covenanted to make repairs and fails to do so, the tenant, after giving reasonable notice to the landlord, may make the repairs and recover the cost of such repairs from the landlord or he may deduct the cost from the rent."[211]

By contrast, a West Virginia case, heard around the same time, the court did not recognize the deduct and repair rights of the tenant.[212] The court held "as have apparently the majority of courts dealing with the issue, that the wide range of contract remedies available to the tenant are adequate to enforce fulfillment of the implied warranty."[213]

These cases reflect the major development in landlord-tenant law and a transition from real property law to contract law in interpreting the legal relationship between landlords and tenantas. However, the *caveat emptor* or "as is" doctrine is still not completely removed from landlord-tenant jurisprudence despite the shift in focus to contract law.

This is because the manner in which the law is being used in different states varies. Landlords can still shift the burden of repair to the tenant in some circumstances because of a lack of clarity in the law. It also means that withholding rent to induce a desired result is not always satisfactory option for tenants. The problems with this approach are numerous.

However, when the coronavirus pandemic began to impact the ability of tenants to pay their rent, these kinds of defenses were rendered null and void. Tenants were unable to pay their rent because they had no income.[214] In addition, many other tenants were out of work and without a steady income. Housing providers were unable, even if they were willing, to provide the same level of repair and maintenance services per their lease contracts.

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207 John Ahlen & Lynn Foster, *Uniform Residential Landlord-Tenant Law: Changes on the Way*, AM. BAR ASS'N PROB. & PROP. MGMT., July/Aug. 2014, at 20.

208 Sharon Yamen et al., *In Defense of the Landlord: A New Understanding of the Property Owner*, 50 URB. LAW. 273, 279 (2021).

209 *Id.*

210 Anchor Inn of Mich., Inc. v. Knopman, 246 N.W.2d 416 (Mich. Ct. App. 1976).

211 *Id.* at 417.

212 Teller v. McCoy, 253 S.E.2d 114 (W. Va. 1978).

213 *Id.* at 126.

214 The statements in this paragraph are based upon the author's activities in assisting tenants in their eviction cases.

C. Rent Strikes & COVID-19: A Different Approach

Overall, despite systematic improvements, tenants have very few options in seeking to address habitability issues and they remain mostly at a disadvantage in landlord-tenant relations. One remaining option for tenants to utilize is the rent strike.

Historically, tenants have used rent strikes as a tactic for a variety of housing disputes and struggles. During the COVID-19 pandemic there were many instances where advocates sought to organize mass rent strikes.[215]

Rent escrow, on a symbolic level, is an individual rent strike. However, a rent strike was described accurately by Richard Bryant when he wrote an account of the 1975 rent strike in Gorbals, in Glasgow, Scotland.[216] Not one, but a number of tenants, decided to withhold rent in order to induce the landlord to address habitability issues in the living units they occupied.[217] In the Gorbals case, the rent strike began with some tenants withholding rent and being sued in court for failing to pay their debts.[218]

The fact that these tenants were not paying rent due to conditions of the units was presented as a defense.[219] The court recognized the tenants' right to assert the defense and dismissed the cases.[220] This case led to other tenants withholding their rents. Eventually, hundreds of tenants had invoked the defense.[221]

Rent strikes have been used by tenants and tenant groups in the United States as well. Rent strikes were considered such a serious matter in New York that individuals conspiring to engage in rent strikes sometimes faced criminal charges.[222] In the 1930s, tenant groups organized rent strikes, blocked evictions, and restored evicted tenants to their homes in defiance of court orders.[223] The tenant groups also faced criminal charges and courts agreed that the actions of the activist tenants promoted civil disorder and "a breach of the peace."[224]

These rent strikes are not confined to a single area of the United States; major cities like New York City and Chicago have experienced rent

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215 Gabe Bullard & Hannah Schuster, *How a Rise in Tenant Activism Reflects Growing Concerns Among D.C. Residents*, WAMU 88.5 (Sept. 29, 2020), https://wamu.org/story/20/09/29/cancel-rent-strike-tenant-protest-dc-pandemic/.

216 *See* Richard Bryant, *Rent Strike in the Gorbals*, 17 CMTY. DEV. J. 41 (1982).

217 *Id.* at 42.

218 *Id.* at 43.

219 *Id.*

220 *Id.*

221 *Id.* at 44-45.

222 *See* People v. Zittel, 186 N.Y.S. 648 (N.Y. Ct. Gen. Sess. 1920) (charging individuals who had engaged in a rent strike).

223 People v. Kopezak, 274 N.Y.S. 629, 631 (N.Y Ct. Spec. Sess. 1934), *aff'd.*, 195 N.E. 202 (N.Y. 1935).

224 *Id.* at 632.

strikes.[225] In 1976, because of an actual "rent escrow" law, tenants in Annapolis organized a rent strike to induce repairs from their landlord.[226]

When the coronavirus began to spread throughout the country and millions were out of work, eviction filings escalated.[227] The shelter of millions was immediately under threat.[228] One of the early tactics to confront the issue was tenant strikes (i.e., withholding of rent by tenants as a group) and the call for a cancellation of rent.[229] These protest strategies continue though there is no evidence that the cancellation of rent in a widespread manner has been pursued by government officials though legislation has been proposed.[230]

Yet, there is another way to look at rent strikes in light of the COVID-19 pandemic. Housing in the United States is highly unaffordable.[231] Evictions on a mass scale and the threat of eviction is a new phenomenon.

VI. A *BELL* BASED ESCROW FUTURE

In the preceding discussions regarding landlord-tenant rights and escrow, this article is attempting to construct a new way in which escrow is processed through the existing system of landlord-tenant relationships. The components of the *Bell* case, which many states already follow to some an extent, should be the basis of that model.[232] Tenants should be allowed to withhold rent if a landlord fails to correct significant housing code violations in a unit after notice has been given.[233] Courts should take these matters very seriously to protect the process and the rights of both parties. The COVID-19 pandemic exposed inherent problems in the system of free market housing

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225 *Freezing Boro Tenants Planning Rent Strikes*, AMSTERDAM NEWS, Feb. 5, 1966, at 23; Nita Brodt, *Grace Street Rent Strike Is a Bitter Battle*, CHI. TRIB., Jan. 10, 1980 at A1.

226 Kaye Thompson, *Little-Known Md. Law Invoked in Rent Strike*, WASH. POST (Jan. 14, 1984), https://www.washingtonpost.com/archive/realestate/1984/01/14/little-known-md-law-invoked-in-rent-strike/c62e230b-758f-4f36-918d-d4ba670e4832/.

227 Olivia Choi, *Access, Asymmetries, and Eviction Diversion: The Eviction Crisis COVID-19 Forced America to Confront*, AM. BAR ASS'N (Aug. 30, 2021), https://www.americanbar.org/groups/crsj/publications/crsj-featured-articles/covid-eviction-crisis/.

228 *Id.*

229 Adam Engelbrecht, *Moratoriums Aren't Enough. Cancel Rent.*, THE DAILY IOWAN (Sept. 17, 2020), https://dailyiowan.com/2020/09/17/opinion-moratoriums-arent-enough-cancel-rent/.

230 Ayelet Sheffey, *Progressive Democrats Want to Cancel Rent and Mortgage for Duration of Pandemic*, BUS. INSIDER (Mar. 12, 2021, 9:48 AM), https://www.businessinsider.com/ilhan-omar-democrats-cancel-rent-mortgage-payments-length-covid-pandemic-2021-3.

231 Aimee Picchi, *"Wrong Direction": Homes Are Now Unaffordable in 4 of 10 U.S. Counties*, CBS NEWS (June 24, 2021, 12:01 AM), https://www.cbsnews.com/news/housing-real-estate-home-buying-affordability/.

232 *See* Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970) (establishing that tenants do not always need to continue paying rent while a case is ongoing).

233 Marcia Stewart, *New York Tenant Rights to Withhold Rent or "Repair and Deduct"*, NOLO, https://www.nolo.com/legal-encyclopedia/new-york-tenant-rights-withhold-rent-repair-deduct.html (last visited Sept. 17, 2021).

especially during times of crisis. A *Bell* model, with government involvement, could be used in future public emergencies.

Advocates for tenants in court should resist advising tenants to withhold rent unless the escrow is court supervised in some manner.[234] This secondary recommendation is part of a recommended approach because the strategy of withholding rent is risky for tenants.[235]

Tenants usually proceed in court without counsel.[236] A tenant, lacking litigation experience, has to establish notice to the housing provider in many jurisdictions.[237] The task of an untrained lay person appearing in court without any assistance to present evidence is not easy. While presenting photographs of repairs to the court in a coherent manner is manageable, establishing written notice or actual notice of the need for repairs is likely not as simple.[238] Perhaps, the expanded use of email and text messaging will alleviate the written notice requirements in the future, but tenants most likely will have to proceed without counsel to demonstrate notification to the landlord regarding repair issues.

In addition to exclusively court supervised escrow payments, another option for tenants in the future should be the expansion of their ability to bring contractual claims against their housing providers. The reason tenants withhold rent is often because they lack options to resolve their disputes with their landlords related to housing code issues.[239]

Since 2010, in the District of Columbia, the court has offered a "Housing Conditions" docket to quickly adjudicate housing code and repair disputes.[240] The city's "Housing Conditions Calendar," according to the Office of Tenant Advocate in the city, "ensures more equitable access to justice; creates a promising tool for more effective enforcement of the District's housing code."[241] In addition, a "tenant's right to clean, safe, and sanitary living conditions" is deemed "as important as the landlord's right to

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234 *See* Berger v. Mimms, 44 Pa. D. & C.2d 608 (Pa. Ct. Com. Pl. 1968) (establishing that once the rent strike was settled, the escrowed funds were to be given to the landlords).

235 *Id.* at 617.

236 Brian Bieretz, *A Right to Counsel in Eviction: Lessons from New York City*, HOUS. MATTERS (Dec. 31, 2019), https://housingmatters.urban.org/articles/right-counsel-eviction-lessons-new-york-city.

237 *See generally Landlords' Duties: Repairs, Maintenance, and Notice to Tenants for Entry*, FINDLAW (Feb. 10, 2020), https://www.findlaw.com/realestate/landlord-tenant-law/landlords-duties-regarding-repairs-maintenance-and-to-provide.html (explaining what type of repairs landlords are generally required to perform).

238 *See generally id.*

239 *See generally When Can I Withhold Rent and Not Get Evicted?*, HG.ORG, https://www.hg.org/legal-articles/when-can-i-withhold-rent-and-not-get-evicted-35467 (last visited Sept. 17, 2021) (explaining when withholding rent is an allowed response to issues with a landlord).

240 Off. of the Tenant Advoc., *New Tenant Court Action to Enforce the District's Housing Code*, DC.GOV (June 14, 2010), https://ota.dc.gov/release/new-tenant-court-action-enforce-districts-housing-code.

241 *Id.*

a rent check."[242] Under the system, tenants are allowed to complete prepared court forms requesting a hearing on code violations in their units.[243] They are able to access the court system as easy as landlords with their issues.

Overall, an ideal escrow system in landlord-tenant courts that do experience cases involving violations of the housing code would provide for supervised escrow where the rent payments are paid into the court registry during the duration of the court case. Secondly, a hearing would be held between the parties to set an appropriate rental amount during the duration case. Finally, tenants would have the right and opportunity initiate an action regarding violations of the housing code and repairs without the landlord filing a lawsuit for eviction. This procedural court system could resemble the conditions docket described above in the District of Columbia.

VII. CONCLUSION

This analysis and exploration of the issue of rent escrow in landlord-tenant matters is not exhaustive. It is hoped it will act as a new beginning for jurisdictions to reconsider how the issue of housing code violations, repairs, and adjudication of these issues is handled in the future. Advocates and lawyers for tenants should not forget that rent withholding in various ways (i.e., escrow, strikes, deduct and repair, etc.) is the strongest tool tenants have at their disposal—even though they are the last resort. As in the workplace where unions have taken this step related to labor, it forces the system and the adversarial party to recognize their rights and their humanity.

As the *Javins*[244] and *Bell*[245] cases demonstrate, landlord-tenant reform with respect to the rights of tenants and their ability to improve their tenancies remains limited in scope without much bolder reform and imagination. There are greater possibilities that act in the best interest of all stakeholders.

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242 *Id.*

243 *See Housing Conditions Calendar Forms*, D.C CTS., https://www.dccourts.gov/services/forms/forms-by-location?location=housingconditionscal (last visited Sept. 17, 2021).

244 Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970).

245 Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970).

VIII. APPENDIX

Figure 1:

	State	Case	Treatment of Escrow	State Statute
1.	Alabama		Tenants may not withhold rent due to failure to make repairs.	ALA. CODE § 35-9A-164 (1975)
2.	Alaska	DeNardo v. Corneloup, 163 P.3d 956 (Alaska 2007)	Counterclaim triggers escrow- court discretion. If violations are cured, then court will determine amount owed to each party.	ALASKA STAT. § 34.03. 190(a) (2021)
3.	Arizona	Mead, Samuel & Co. v. Dyar, 622 P.2d 512 (Ariz. Ct. App. 1980)	Counterclaim triggers escrow- court discretion. Tenant in possession may be required by court to pay rent; tenant not in possession is not required to pay rent.	ARIZ. REV. STAT. ANN. § 33-1365 (1995)
4.	Arkansas		"In any action in which the landlord sues for possession and the tenant raises defenses or counterclaims under this chapter or the rental agreement [] tenant shall pay the landlord all rent that becomes due after the issuance of a written order requiring the tenant to vacate or show cause as rent becomes due." ARK. CODE ANN. § 18-17-706(1)(a)(i) (2021)	ARK. CODE ANN. § 18-17-706(1)(a)(i) (2021)
5.	California	Scott v. Kaiuum, 213 Cal. Rptr. 3d 757 (Cal. App. Dep't Super. Ct. 2017)	Landlord may not demand, collect, or increase rent if the dwelling is declared substandard.	CAL. CIV. CODE §1942.4 (West 2004)
6.	Colorado		Tenant filing counterclaim based on landlord habitability must pay into the court for all or part of the rent accrued.	COLO. REV. STAT. § 38-12-507(1)(c)(I) (2021)
7.	Connecticut		"If the defendant appears, the court shall, upon motion and without hearing, unless the defendant files an objection within five	CON. GEN. STAT. § 47a-26b(a) (2021)

			days of the filing of the motion, order the defendant to deposit with the court within ten days of the filing of the motion payments for use and occupancy in an amount equal to the last agreed-upon rent or, in the absence of a prior agreed-upon rent, in an amount equal to the fair rental value of the premises during the pendency of such action accruing from the date of such order." CON. GEN. STAT. § 47a-26b(a) (2021)	
8.	Delaware	Lowe v. George, No. 96-11-059, 1997 WL 1737114 (Ct. Common Pleas May 29, 1997)	Tenant may keep 2/3 per diem rent accruing during period where dwelling is uninhabitable but must have proof of damages.	DEL. CODE ANN. tit. 25, § 5308 (2022)
—	District of Columbia	Bell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970); Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); Cooks v. Fowler, 459 F.2d 1269 (D.C. Cir. 1971); McQueen v. Lustine Realty Co., 547 A.2d 172 (D.C. 1988); Cunningham v. Phoenix Mgmt., Inc., 540 A.2d 1099 (D.C. 1988)	Future rent may be paid into court registry as it becomes due during litigation proceedings; landlord's entitlement to rent payments is subject to the warranty of habitability; protective orders may be issued by the court when landlord or tenant breaches duties.	
9.	Florida	K.D. Lewis Enters. v. Smith, 445 So. 2d 1032 (Fla. Dist. Ct. App. 1984); Minalla v. Equinamics Corp., 954 So. 2d 645 (Fla. Dist. Ct. App. 2007); Blanco v. Novoa, 854 So. 2d 672 (Fla. Dist. Ct.	In an action by the landlord which includes a claim for possession of real property, the tenant shall pay into the court registry the amount alleged in the complaint as unpaid, or if such amount is contested, such amount as is determined by the court, and any rent accruing during the pendency of the action, when due, unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the	FLA. STAT. § 83.232(1) (2021)

		App. 2003); First Hanover v. Vazquez, 848 So. 2d 1188 (Fla. Dist. Ct. App. 2003)	complaint alleges as unpaid." FLA. STAT. § 83.232(1) (2021)	
10.	Georgia	Mitchell v. Excelsior Sales & Imports, Inc., 256 S.E.2d 785 (Ga. 1979); Mitcham v. Reese, 379 S.E.2d. 637 (Ga. Ct. App. 1989)	If case not settled in two weeks from date of service tenant shall be required to pay into registry all rent and utility payments which are the responsibility of the tenant payable to the landlord under terms of the lease "which become due after the issuance of the dispossessory warrant, said rent and utility payments to be paid as such become due." GA. CODE ANN. §44-7-54(a)(1)	GA. CODE ANN. §44-7-54(a)(1)
11.	Hawaii	Kamaole Two Hui v. Aziz Enters., 854 P.2d 232 (Haw. Ct. App. 1993)	At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court discretion to pay rent as it becomes due into the court. "[I]n the case of a proceeding in which a rent increase is in issue, the amount of the rent prior to the increase; provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a signed, written instrument agreeing that the rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund." HAW. REV. STAT. § 521-78(a) (2020)	HAW. REV. STAT. § 521-78(a) (2020)
12.	Idaho			no statute A.G. guidelines
13.	Illinois	Lipkin v. Burnstine, 152 N.E.2d. 745 (Ill. App. Ct. 1958)	Plaintiff was not entitled to have rent deposited with the court pending the litigation because tenant's obligation to pay rent is independent of landlord's covenant to repair.	no statute
14.	Indiana			no statute

15.	Iowa		"In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, the tenant may counterclaim . . . . In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party." IOWA CODE § 562A.24 (1979)	IOWA CODE § 562A.24 (1979)
16.	Kansas		"In an action for possession based upon nonpayment of the rent, or in an action for rent where the tenant is in possession, the tenant shall counterclaim . . . . In that event, the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party." KAN. STAT. ANN. § 58-2561(a) (2019). Tenant in possession may be required by court to pay rent; tenant not in possession is not required to pay rent.	KAN. STAT. ANN. § 58-2561(a) (2019)
17.	Kentucky		"In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim . . . . [T]he court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party." KY. REV. STAT. ANN. § 383.645 (2022) Tenant in possession may be required by court to pay rent; tenant not in possession is not required to pay rent.	KY. REV. STAT. ANN. § 383.645 (2022)
18.	Louisiana			no statute
19.	Maine	Rairdon v. Dwyer, 598 A.2d 444 (Me. 1991)	"When the defendant appeals, the defendant shall pay to the plaintiff or, if there is a dispute about the rent, to the District Court, any unpaid portion of the current month's rent or the rent arrearage, whichever is less." ME. REV. STAT. ANN. tit. 14, § 6008(2)(A) (West 2021)	ME. REV. STAT. ANN. tit. 14, § 6008(2)(A) (West 2021)
20.	Maryland	Lucky Ned Pepper v. Columbia Park, 494 A.2d 947 (Md.	"[A]ny case brought under § 8-401 or § 8-402 of this subtitle . . . orders an adjournment of the trial for a longer period	MD. CODE ANN., REAL PROP. §§ 8-

		1985); Harris v. Hous. Auth. Balt. City, 549 A.2d 770 (Md. 1988)	than provided for in the section . . . the tenant shall pay into the court exercising jurisdiction in the case an amount and in the manner determined by the court to be appropriate . . . ." MD. CODE. ANN., REAL PROP. § 8-403 (West 2021) "[T]he court may order a tenant to pay rents due and as come due into an administrative agency of any county which is empowered by local law to hold rents in escrow pending investigation and disposition." *Id.*	402 to -403 (West 2021)
21.	Massachusetts		"There shall be no recovery of possession pursuant to this chapter pending final disposition of the plaintiff's action if the court finds that the requirements of the second paragraph have been met. The court after hearing the case may require the tenant or occupant claiming under this section to pay to the clerk of the court the fair value of the use and occupation of the premises less the amount awarded the tenant or occupant for any claim under this section, or to make a deposit with the clerk of such amount or such installments thereof from time to time as the court may direct, for the occupation of the premises." MASS. GEN. LAWS ch. 239, §8A (2022)	MASS. GEN. LAWS ch. 239, §8A (2022)
22.	Michigan		"The duty to pay rent in accordance with the terms of any lease or agreement or under the provisions of any statute shall be suspended and the suspended rentals shall be paid into an escrow account as provided in subsection (4), during that period when the premises have not been issued a certificate of compliance, or when such certificate, once issued, has been suspended." Mich. Comp. Law § 125.530(3)-(4) (2021)	Mich. Comp. Law §§ 125.530(3)-(4) (2021)
23.	Minnesota		"If the tenant has paid to the landlord or brought into court the amount of rent in arrears but is unable to pay the interest, costs of the action, and attorney's fees required by paragraph (a), the court may permit the tenant to pay these amounts into	MINN. STAT. § 504B.291(b) (2021)

			court and be restored to possession within the same period of time, if any, for which the court stays the issuance of the order to vacate under section 504B.345." MINN. STAT. § 504B.291(b) (2021	
24.	Mississippi		Repair and deduct allowed after 30 day notice to landlord.	MISS. CODE ANN. § 89-8-15 (2022)
25.	Missouri		Nuisance-Upon the entry of an order directing the payment of rents pursuant to section 441.570, such payment in accordance with the terms of the order shall be a valid defense to any action or proceeding brought by an owner against any tenant to recover possession of real property for the nonpayment of rent due and payable after the date of issuance of the order.	MO. REV. STAT. § 441.570 (2012)
26.	Montana		"In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount the tenant may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party." MONT. CODE ANN. § 76-24-421 (2022). So, a tenant in possession may be required by court to pay rent escrow; while a tenant not in possession is not required.	MONT. CODE ANN. § 76-24-421 (2022)
27.	Nebraska		"In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, the tenant may counterclaim for any amount which he or she may recover under the rental agreement or the Uniform Residential Landlord and Tenant Act. In that event, the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party." NEB. REV. STAT. § 76-1428 (2022)	NEB. REV. STAT. § 76-1428 (2022)

			So, a tenant in possession may be required by the court to pay rent escrow, while a tenant not in possession is not required.	
28.	Nevada		"In an action for possession based upon nonpayment of rent or in an action for rent where the tenant is in possession, the tenant may defend and counterclaim for any amount which the tenant may recover under the rental agreement, this chapter, or other applicable law. If it appears that there is money which may be due to the landlord by the tenant after the day of the hearing or if a judgment is delayed for any reason, the court shall require a tenant who remains in possession of the premises to deposit with the court a just and reasonable amount to satisfy the obligation, but not more than [one] day's rent for each day until the new hearing date." NEV. REV. STAT. § 118A.490 (2022)	NEV. REV. STAT. § 118A.490 (2022)
29.	New Hampshire		"No action for possession based on nonpayment of rent shall be maintained . . . if such premises are in substantial violation of the standards of fitness for health and safety . . . local codes, ordinances . . . and such violation materially affects the habitability of said premises, provided that:(a) The tenant proves by clear and convincing evidence that, while not in arrears in rent, he provided notice of the violation to the person to whom he customarily pays rent; and(b) The landlord failed to correct the violations within 14 days of the receipt of such written notice or, in an emergency, as promptly as conditions require; and(c) The violations were not caused by the tenant, a member of the tenant's family or other person on the premises with the tenant's consent; and(d) Necessary repairs have not been prevented due to extreme weather conditions or due to the failure of the tenant to allow the landlord reasonable	N.H. REV. STAT. ANN. § 540:13(d) (2022)

			access to the premises." N.H. REV. STAT. ANN. § 540:13(d) (2022)	
30.	New Jersey	Drew v. Pullen, 412 A.2d 1331 (N.J. Super. Ct. App. Div. 1980)	Where there is breach of landlord's covenant of habitability, among other things, a tenant may give notice to landlord of defect and if landlord fails to remedy condition, tenant himself may do so, deducting reasonable cost of repair from his rent.	N.J. STAT. ANN § 2A:42-88 (West 2022)
31.	New Mexico		"In an action for possession based upon nonpayment of rent or in an action for rent where the resident is in possession, the resident may counterclaim for any amount which he may recover under the rental agreement or the Uniform Owner-Resident Relations Act, providing that the resident shall be responsible for payment to the owner of the rent specified in the rental agreement during his period of possession. Judgment shall be entered in accordance with the facts of the case." N.M. STAT. ANN. § 47-8-30 (2022)	N.M. STAT. ANN. § 47-8-30 (2022)
32.	New York		"The tenant or respondent shall not be entitled to the stay unless he shall deposit with the clerk of the court the rent then due, which shall, for the purposes of this section, be deemed the same as the tenant was liable for during the preceding month or such as is reserved as the monthly rent in the agreement under which he obtained possession of the premises." N.Y. REAL PROP. ACTS LAW §755 (McKinney 2022) "[P]roper proof of the existence of a condition that is in the opinion of the court, such as to constructively evict the tenant from a portion of the premises occupied by him, or is or is, likely to become, dangerous to life, health, or safety, the court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent, or any action for rent or rental value." *Id.*	N.Y. REAL PROP. ACTS LAW §755 (McKinney 2022)
33.	North Carolina		"If the judgment in district court is against the defendant appellant and the defendant appellant does not appeal the judgment, the	N.C. GEN. STAT. ANN.

			defendant appellant shall pay rent to the plaintiff for the time the defendant appellant remains in possession of the premises after the judgment is given. Rent shall be prorated if the judgment is executed before the day rent would become due under the terms of the lease." N.C. GEN. STAT. ANN. §42-34.1 (2021)	§42-34.1 (2021)
34.	North Dakota		Tenants may repair and deduct after giving landlord adequate notice.	N.D. CENT. CODE §47-16-13 (2022)
35.	Ohio	Smith v. Wright, 416 N.E.2d 655 (Ohio Ct. App. 1979)	"If a landlord receives the notice described in division (A) of this section and after receipt of the notice fails to remedy the condition within a reasonable time considering the severity of the condition and the time necessary to remedy it, or within thirty days, whichever is sooner, and if the tenant is current in rent payments due under the rental agreement, the tenant may do one of the following: (1) Deposit all rent that is due and thereafter becomes due the landlord with the clerk . . . ; or (2) Apply to the court for an order directing the landlord to remedy the condition. As part of the application, the tenant may deposit rent pursuant to division (B)(1) of this section, may apply for an order reducing the periodic rent due the landlord until the landlord remedies the condition, and may apply for an order to use the rent deposited to remedy the condition." OHIO REV. CODE ANN. § 5321.07 (West 2022)	OHIO REV. CODE ANN. § 5321.07 (West 2022)
36.	Oklahoma		Tenants may repair and deduct after giving landlord adequate notice.	OKLA. STAT. tit. 41, §121 (2022)
37.	Oregon		In the event the tenant counterclaims, the court at the landlord's or tenant's request may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party.	OR. REV. STAT. § 90.370 (2022)

38.	Pennsylvania	Pugh v. Holmes, 405 A.2d 897 (Pa. 1979); Glickman Real Est. Dev. v. Korf, 446 A.2d 300 (Pa. Super. Ct. 1982); Allegheny Cnty. Hous. Auth. v. Berry, 487 A.2d 995 (Pa. Super. Ct. 1985)	"During any period when the duty to pay rent is suspended, and the tenant continues to occupy the dwelling, the rent withheld shall be deposited by the tenant in an escrow account in a bank or trust company approved by the city or county as the case may be and shall be paid to the landlord when the dwelling is certified as fit for human habitation at any time within six months from the date on which the dwelling was certified as unfit for human habitation. If, at the end of six months after the certification of a dwelling as unfit for human habitation, such dwelling has not been certified as fit for human habitation, any moneys deposited in escrow on account of continued occupancy shall be payable to the depositor, except that any funds deposited in escrow may be used, for the purpose of making such dwelling fit for human habitation and for the payment of utility services for which the landlord is obligated but which he refuses or is unable to pay. No tenant shall be evicted for any reason whatsoever while rent is deposited in escrow." 35 PA. CONS. STAT. § 1700-1 (2022)	35 PA. CONS. STAT. § 1700-1 (2022)
39.	Rhode Island		"In an action for possession based upon nonpayment of rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he or she may recover under the rental agreement or this chapter. In that event, the court, from time to time, may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party." 34 R.I. GEN. LAWS § 34-18-32 (2022). Tenant in possession may be required by court to pay rent; tenant not in possession is not required to pay rent.	34 R.I. GEN. LAWS §§ 34-18-32, -35 (2022)
40.	South Carolina		"In any action where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the rental agreement:	S.C. CODE ANN. §§ 27-40-640, -790 (2022)

			(a) The tenant is required to pay the landlord all rent which becomes due after the issuance of a written rule requiring the tenant to vacate or show cause as rent becomes due and the landlord is required to provide the tenant with a written receipt for each payment except when the tenant pays by check. If landlord sues for possession for nonpayment tenant is req. to pay following a written rule req. to vacate or show cause" S.C. CODE ANN. § 27-40-790 (2022)	
41.	South Dakota		Tenants may put funds in escrow for habitability violations.	S.D. CODIFIED LAWS § 43-32-9 (2022)
42.	Tennessee		Tenants may put funds in escrow for habitability violations and failure of landlord to provide essential services.	TENN. CODE ANN. §§ 66-28-502, 68-111-104
43.	Texas		Tenants must give landlord notice and may "(1) terminate the lease; (2) have the condition repaired or remedied according to Section 92.0561; (3) deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy according to Section 92.0561; and (4) obtain judicial remedies according to Section 92.0563." TEX. PROP. CODE ANN. § 92.056 (West 2016)	TEX. PROP. CODE ANN. § 92.056 (West 2016)
44.	Utah		Tenants may put funds in escrow for habitability violations and failure of landlord to provide essential services.	UTAH CODE ANN. § 57-22-6 (West 2022)
45.	Vermont		Tenants may repair and deduct or put funds in escrow.	VT. STAT. ANN. TIT. 9 § 4458 (West 2022) VT. STAT. ANN. TIT. 9 § 4459(a)(West 2022)

46.	Virginia	Principal Residential Mortg. Corp. v. Curtis, 61 Va. Cir. 151 (Va. Cir. Ct. 2003)	Where a landlord has filed an unlawful detainer action seeking possession of the premises as provided by this chapter and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance, or to set the case for a contested trial, the court shall not require the rent to be escrowed. B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account for the case to be continued or set for contested trial. The court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the premises. C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.	VA. CODE ANN. § 55.1-1244 (2022)
47.	Washington			statute was repealed in 2021
48.	West Virginia		If any party having a right or claim to such lands shall, at any time before the trial in such action of ejectment or of unlawful detainer, pay or tender to the party entitled	W. VA CODE § 37-6-30 (2022)

			to such rent, or to his attorney in the cause, or pay into court, all the rents and arrears, with interest and costs, all further proceedings in the action shall cease. If the person claiming the land shall, upon bill filed as aforesaid, be relieved in equity, he shall hold the land as before the proceedings began, without a new lease or conveyance.	
49.	Wisconsin		Tenants may put funds in escrow when landlord fails to provide essential services. No statute for repairs.	WIS. STAT. § 704.07(4) (2022)
50.	Wyoming		Tenants may put funds in escrow for habitability violations and failure of landlord to provide essential services.	WYO. STAT. ANN. § 1-21-1203, -1206 (2022)