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SOUTHERN CALIFORNIA ASSOCIATION OF NONPROFIT HOUSING

Habitability Claims

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Introduction

Definition of Habitability Claims

Habitability claims occur when plaintiffs allege their landlord breached an *implied* warranty of habitability. Loosely, the implied warranty of habitability means that landlords must maintain their rental property in a condition that is fit for the occupation of human beings.

However, there is no concise/standard statutory definition of the term “habitability”, therefore, landlords must substantially comply with building and housing code standards.



Introduction

Generally, every unit must have the following:

- Effective waterproofing / weather protection
 - No deteriorating plaster, exterior walls, roofs, ceilings, foundations, floors, doors, broken windows.
- Plumbing / gas facilities
- Water
 - Hot / cold running water
 - Must have water closet, lavatory, or bathtub/shower.
- Heating
- Ventilation
- Electrical lighting / wiring

Note: This list is not exhaustive



Introduction

Generally, every unit must have the following:

- Be kept clean and sanitary and free of trash, rodents, and vermin
 - No mold
 - Adequate trash receptacles
- Floors, stairways, and railings in good condition
- Mailbox for each unit (locking)
- Hardwired/operational telephone jack
- No dampness
- Free of fire hazards
- Code compliant fire suppression systems

Note: This list is not exhaustive



What is Being Alleged

Most of the lawsuits we see filed against affordable housing organizations allege the landlord and/or PM company breached the implied warranty of habitability by failing to correct substandard conditions, and then lists the alleged deficiencies, which typically is an exhaustive list of the entire code section. Some examples are:

- Maintain the premises from accumulations of trash and debris as required by LA Civil Code 11.16.010, LA Municipal Code 91.8104 and other applicable laws
- Maintain approved screening to all operable windows, to all other openings in the exterior walls as required by LA Civil Code 11.20.330 and other applicable laws
- Service all fire extinguishers as required by LA Municipal Code 57.140.07 and other applicable laws
- Provide and maintain required smoke detectors pursuant to LA Municipal Code 57.112.06(A) and other applicable laws



What is Being Alleged

The other types of habitability lawsuits we see focus on one or two key issues the tenants experienced and allegedly made complaints about but the issues were not resolved, such as bed bug, mold, or plumbing issues. Code section violation examples:

- Maintain the building free from rodent infestation and rodent harborages as required by LA Civil Code 11.30.010 and other applicable laws
- Maintain all plumbing lines and plumbing fixtures free from defects. Correct any loose, leaky, clogged or otherwise faulty toilets, faucets, sinks, showers, bathtubs and plumbing lines as required by the Los Angeles Municipal Code, Sections 91.8104; 91.8104.9; Uniform Plumbing Code, Sections 302; 801; 907 and other applicable laws.



Damages

As a result of these alleged deficiencies and the failure to correct them, typically the lawsuits allege plaintiffs suffer (or continue to suffer) the following:

- Illness
- Physical injury
- Mental stress
- Emotional distress
- Discomfort
- Annoyance
- Anxiety

Note: This list is not exhaustive



Damages

As a result of what plaintiffs have allegedly suffered, they claim monetary losses due to:

- Loss in value of his/her leasehold
- Personal property damage
- Out-of-pocket costs
- Medical expenses (for both physical & mental ailments)
- Lost income
- Loss of earning capacity
- Pre and post-judgment interest
- **Reasonable attorney's fees and costs pursuant to contract and Section 1943.4 of the Civil Code**

Note: This list is not exhaustive



Habitability Claim Examples

- Pre-litigation:
 - 4 tenants hired an attorney who demanded \$200k for his clients' injuries which were allegedly caused by pest infestation, unsanitary conditions, and plumbing leaks
 - Settled for \$75k total/\$18,750 per plaintiff
 - Total cost incurred: \$84,362.98
- Litigated:
 - Boilerplate habitability lawsuit fled by 32 plaintiffs, with 9 additional plaintiffs added prior to settlement
 - Settled for \$534k total/\$10-14k per plaintiff
 - Total cost incurred: \$927,815.78



Impact of Claims/Lawsuits

Increased Insurance Costs & Out of Pocket Expenses

Frequency or severity of habitability claims may result in:

- ❖ Possible non-renewal of coverage
- ❖ Exclusion of habitability coverage for the location, or even the entire portfolio
- ❖ Potential surcharge in premium rates for incumbent carrier of 25% or more
- ❖ Carrier reduction in available liability limit, which can put the building out of compliance with lender and investor requirements



Defending Habitability Claims

Defending habitability claims at trial is nearly impossible. One defense attorney we spoke with said he's "never heard of a habitability case being successfully defended in LA".

Why is it so hard? Here are a few factors:

- Jury bias
- A lot of "he said she said" arguments, which are nearly impossible to defend
- Difficult for there to be no issues with their unit



Defending Habitability Claims

What can we do?

While we may not be able to defend these claims in their entirety, we can take steps to prevent them from occurring, and establish a defense if a claim is made. However, defense attorneys cannot defend “he said she said” claims, they need evidence to back a housing provider’s claim that they provided a habitable unit to their tenant.

- Communicate and Document
- Communicate and Document
- Communicate and Document



Defending Habitability Claims

Develop Policies & Procedures for Tenant Complaints

1. Create a procedure for tenants to make work orders/complaints and ensure that it is accessible for tenants
 - a) Have a complaint box outside of the manager's office
 - b) Have a form tenants can complete
 - c) Provide tenants with phone numbers and emails to contact when there is an issue
2. Have a written procedure for staff to respond to any tenant complaint or report within 5 working days of receipt. Response to tenant must be in writing and response must be kept on file
3. Have a written system to catalogue every tenant complaint or request for any correction to your physical plant or any change in procedures for property management practices



Defending Habitability Claims

Develop Policies & Procedures for Tenant Complaints

4. Make it a written policy to correct critical repairs immediately, and to take no longer than 7 days; noncritical repairs should be fixed within 30 days. If no issue is found/repair is needed, respond in writing to the tenant that you investigated and found no issue or concern. If no issue is found, tell the tenant what you did to determine that and invite the tenant back to provide additional information they feel you may have missed; never close the door on the tenant (so to speak).
5. Create a calendar system to raise an alarm if a reported critical problem has not been corrected within a week or if a noncritical problem has not been corrected within the 30 calendar day window.



Defending Habitability Claims

Develop Policies & Procedures for Tenant Complaints

6. If not corrected within a week or 30 days, a written communication must be given to tenant with the measures taken to date and when the issue will be corrected. Such notice must communicate the large scope of the correction and why it will take longer to correct.

Note: Per Civil Code Sections 1941-1942, if violations are found they must be corrected within 35 days. If not corrected, the landlord cannot ask for or collect rent. Please keep this in mind if a violation is found/citation is issued.



Defending Habitability Claims

Develop Policies & Procedures to Document Property Conditions

1. Establish a policy for maintenance staff to inspect common areas at the property on a daily or weekly basis (depending on availability), and for property managers to audit the daily/weekly inspections and inspect the property themselves on a monthly basis
2. Have a checklist to help identify and document issues or concerns found during the inspections.
3. If there were no issues found, document that as well.
Ex: “we inspected the exterior and interior on X date and found no hazardous conditions”
4. If issues or concerns are found, remove or eliminate the unsafe condition immediately, If staff can't get to it right away, they should warn people of the hazard and close off the area until it can be addressed. Once the hazard is fixed, document it on the report or via a work order.



Defending Habitability Claims

Importance of Maintaining Documentation

The policies, procedures and documentation we've discussed today will become evidence to defend potential habitability claims being made against your organization. However, the evidence is only going to be helpful if we have it!

Currently the statute of limitations for habitability claims when there is a written lease is 4 years. Therefore, at the very least you must be prepared to defend claims going back that far. Some plaintiffs will file a complaint a day or two before the statute runs out, and wait a considerable amount of time before serving, so we recommend maintaining tenant and facility documentation for longer than 4 years.



Think
“**A****B****C****D****E**”

A

Always

B

Be

C

Careful

D

Document

E

Everything



If a Claim Occurs

Help Defense Attorneys at the Onset

Provide defense counsel with copies of:

- Plaintiffs' tenant files
 - Communications with plaintiffs (if not kept in tenant files)
- Work orders during the alleged time period and documentation showing work orders were addressed
- Citations the property received as well as the proof of correction(s)
- Records of bed bug treatments, mold treatment, rodent infestation remediation
- Contracts with relevant 3rd parties (e.g. property management company, plumbers, mold remediation vendors)
- Property's policies & procedures to maintain a habitable building
- Common area and unit inspection reports during the alleged time period



If a Claim Occurs

Beware of Retaliation Claims

- This is a new issue that is becoming a more frequent to increase the settlement value of the claim.
- When there is an active lawsuit/claim, do not do anything outside of normal policies and procedures without consulting an attorney.
- Do NOT send the tenant an eviction notice without consulting your attorney, even if they are late on rent and you would otherwise normally do so.



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Questions?



APPLY WHAT YOU LEARNED

What else can be done?

You have learned about the common claims and the best strategies to defend a claim.

- What else might be done to reduce the impact of habitability claims on nonprofit affordable housing?
- What next steps would you recommend or take yourself to reduce the likelihood and severity of claims?

Thank you!

**Robyn L Roesner, JD, CPCU,
AAI, CRIS**

Area Executive Vice President and
National Director – Affordable
Housing Nonprofit Practice
Robyn_Roesner@ajg.com

Sara E. Gibson, CRM

Risk Control Consultant
Real Estate & Hospitality and Nonprofit
Practices

Sara_Gibson@ajg.com

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