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The Uniform Residential Landlord and Tenant Act and Its Potential Effects upon Maryland Landlord-Tenant Law

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The author examines the Uniform Residential Landlord and Tenant Act, which is currently being considered for adoption by the Maryland General Assembly. The Act codifies the recent judicial tendency to treat the landlord-tenant relationship as one governed by contract principles rather than by the principles governing the conveyance of estates in land. The article's major emphasis is on the potential impact of the Act on the common law and the present Maryland statutes governing the landlord-tenant relationship.

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Mr. Davison is Reporter for the Maryland Governor’s Commission on Landlord-Tenant Law Revision. This article is based on a report prepared for the Commission, but the views expressed are the personal views of the author and are not the official views of the Maryland Governor’s Commission on Landlord-Tenant Law Revision or the Executive Department of the State of Maryland.

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I. INTRODUCTION

The National Conference of Commissioners of Uniform State Laws, through its enactment of the Uniform Residential Landlord and Tenant Act (hereinafter referred to as the "URLTA" or the "Act"), has been a leading force in statutory reform of landlord-tenant law governing residential leases.

Since 1972, the URLTA has been adopted either in its entirety or in major substance in eight jurisdictions: Alaska, Arizona, Florida, Hawaii, Kentucky, Nebraska, Oregon, and Virginia. In addition, Washington and Ohio have adopted statutes that draw heavily from the URLTA.

1. This organization is comprised of approximately 250 of the nation's leading lawyers, judges and law professors, appointed by each state to draft state laws and establish uniformity among state laws.
2. The Uniform Residential Landlord and Tenant Act, URLTA, (U.L.A.) (Supp. 1975), was approved and recommended for enactment by the Commissioners at their annual conference in 1972. URLTA (U.L.A.) Historical Note (Supp. 1975). The Act was approved by the House of Delegates of the American Bar Association at its 1974 mid-year meeting at Houston, Texas, on February 4-5, 1974. Id.

The work of the Commissioners was based on a Model Residential Landlord-Tenant Code drafted by the American Bar Foundation, which is the research arm of the American Bar Association. See J. Levi, P. Hablutzel, L. Rosenberg, J. White, Model Residential Landlord-Tenant Code 3 (Tent. Draft 1969). The Commissioners heard from representatives of such diverse interests as owners, managers, mortgagees, savings and loan institutions and banks, as well as tenants, tenants' unions, legal aid groups, and poverty law groups.

The URLTA is being studied by the Maryland Governor’s Commission on Landlord-Tenant Law Revision, which has the authority to prepare bills recommending enactment of the URLTA in whole or in part by the Maryland General Assembly. This article will examine the present Maryland law governing the duties and remedies of residential landlords and tenants, and will analyze the changes that would be effected by the adoption of the URLTA.

II. HISTORICAL DEVELOPMENT OF RESIDENTIAL LANDLORD AND TENANT LAW

The common law of landlord and tenant was derived from feudal property law during the early Middle Ages, when England was a rural agrarian society. Most leases involved the lease of rural land to tenant farmers. A rental agreement between a lessor of agrarian land and a tenant farmer was considered to be, in essence, a conveyance of an estate in land; the conveyance of any buildings on the land was


14. In several Maryland counties, certain areas of landlord-tenant law are governed by public local law or by county ordinance rather than by public general law enacted by the Maryland General Assembly. Montgomery County, MONTGOMERY Co., MD., CODE Ch. 29 (1972), and Prince George’s County, PRINCE GEORGE’S Co., MD. CODE Ch. 10 (1973), specify the duties and remedies of landlords and tenants, and regulate lease provisions. Each of these counties has established an Office of Landlord-Tenant Affairs and a Commission on Landlord-Tenant Affairs to regulate the licensing of landlords of residential premises and to investigate and resolve disputes between landlords and tenants. Both counties also have rent control ordinances.

Chapter Nine of the Baltimore City Code contains provisions governing retaliatory eviction, Pub. L. L. of Md. art. 4, § 9-10 (1974), rent escrow, Id. § 9-9, holdover tenants, Id. § 9-14, termination of tenancies, Id., and summary eviction for failure to pay rent due and payable, Id. § 9-2-8. These provisions of the Baltimore City Code are substantially the same as the Maryland public general laws governing retaliatory eviction. Md. ANN. CODE, Real Prop. Art., § 8-208.1 (Supp. 1975); rent escrow, Id. § 8-211 (Supp. 1975); holdover tenants and termination of tenancies, Id. § 8-402 (Supp. 1975) amending § 8-402 (1974); and summary eviction for failure to pay rent due and payable, Id. § 8-401 (Supp. 1975). Baltimore County, BALTIMORE Co. CODE, ch. 16 (1968), allows for the summary eviction of tenants for failure to pay rent due and payable; the procedure is similar to that provided by the Maryland public general law. Public local law prohibits and makes unenforceable, in Baltimore City and Anne Arundel County, liquidated damages or penalty clauses in leases for residential premises, and limits the amount of damages that may be recovered by the landlord from the tenant who vacates the premises before the end of the term or who fails or refuses to take possession of the premises. Md. ANN. CODE, Real Prop. Art., § 8-212 (Supp. 1975), requires landlords of residential premises in Anne Arundel County to give a tenant a receipt if he pays rent in cash, Id. § 8-205 (1974), and prohibits retaliatory evictions in Montgomery County, Id. § 8-206 (1974).

The URLTA could be enacted either on a state-wide basis as a public general law or on a county-by-county basis as a county ordinance or as a public local law enacted by the Maryland General Assembly.

15. 3 W. HOLDsworth, A HISTORY OF ENGLISH LAW 198-213 (5th ed. 1966).

considered incidental to the conveyance of the land.\(^\text{17}\) Thus, as one court has stated, "in traditional analysis, a lease was the conveyance of an interest in land, [and] courts have usually utilized the special rules governing real property transactions to resolve controversies involving leases."\(^\text{18}\) Although the duties of parties to contracts are usually mutually dependent, the duties of landlord and tenant under written leases have traditionally been considered to be independent.\(^\text{19}\) Thus, the tenant was liable for the full rent even though the landlord had breached an express or implied covenant of the lease agreement.\(^\text{20}\)

In the United States today, most leases involve city dwellers seeking residential apartments. The language of a recent case, Javins v. First National Realty Corp.,\(^\text{21}\) reflects the status of the modern residential tenant.

The value of the lease is that it gives [them] a place to live. The city dweller who seeks to lease an apartment on the third floor of a tenement has little interest in the land 30 or 40 feet below, or even in the bare right to possession within the four walls of his apartment. When American city dwellers, both rich and poor, seek "shelter" today, they seek a well known package of goods and services—a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.\(^\text{22}\)

The urban residential tenant is more akin to a buyer of goods and services than was the early agrarian tenant farmer in England. The lease he signs will often contain numerous clauses giving it a "predominantly contractual ingredient."\(^\text{23}\) In recognition of the needs of this type of tenant and lease, some courts have recently begun to reappraise the common law of landlord and tenant and to apply modern contract law to the construction and interpretation of residential leases.\(^\text{24}\)

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20. See 1 American Law of Property § 3.11. However, the tenant was released from the duty to pay rent when the landlord breached either the implied covenant to deliver possession or the implied covenant not to disturb the tenant's quiet enjoyment of the premises. Id.
22. Id. at 1074.
The National Conference of Commissioners of Uniform State Laws recognized these developments and incorporated many of them into the URLTA, which reflects some basic changes in the underlying philosophy of landlord-tenant relations. The URLTA is a comprehensive statute attempting to correct the inequities that have resulted from application of the common law to residential landlord-tenant relationships in modern urban society.\(^{25}\) The express purpose of the Act\(^{26}\) is to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords\(^{27}\) and tenants.\(^{28}\)

The URLTA grounds the lease agreement on modern contract principles and makes the obligation of the tenant to pay rent conditional upon the landlord's fulfillment of certain obligations, among which is the duty to deliver and maintain the premises in a condition that complies with housing code standards for health and safety.\(^{29}\) Other principles of modern contract law are applied to leases for residential premises, including an obligation for both the landlord and tenant to deal in good faith,\(^{30}\) a general obligation to mitigate damages when the other party breaches the lease agreement,\(^{31}\) and a prohibition against enforcement of unconscionable lease provisions.\(^{32}\)

III. APPLICABILITY OF THE UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (URLTA)

The URLTA is applicable to rental agreements\(^{33}\) for residential dwelling units\(^{34}\) located within a state, whether the agreement was

\(^{25}\) URLTA § 1.102, Comment.

\(^{26}\) URLTA § 1.102.

\(^{27}\) "Landlord" is defined by the URLTA to include a sublessor. URLTA § 1.301(5).

\(^{28}\) "Tenant" is defined as "a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others," URLTA § 1.301(14), and thus would include a sublessee or assignee of a tenant.

\(^{29}\) URLTA § 2.104.

\(^{30}\) URLTA § 1.302. "Good faith" is defined as "honesty in fact in the conduct of the transaction concerned." URLTA § 1.301(4). Section 1.106 of the URLTA authorizes good faith settlements of disputed claims arising under the Act or rental agreements.

\(^{31}\) URLTA § 1.105(a).

\(^{32}\) URLTA § 1.303.

\(^{33}\) Section 1.301(11) of the URLTA defines "rental agreement" as "all agreements, written or oral, and valid rules and regulations . . . embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises."

\(^{34}\) Section 1.201 of the URLTA states that the URLTA is applicable only to leases of "dwelling units." "Dwelling unit" is defined by Section 1.301(3) of the URLTA as a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by 2 or more persons who maintain a common household.

Section 1.202 of the URLTA does not mention mobile homes. When a mobile home is rented primarily for residential purposes, it would presumably be covered by the URLTA. Although Section 1.301 of the URLTA (General Definitions) does not mention "mobile homes," the definition of "dwelling unit" in Section 1.301(3) could be construed to include mobile homes.
executed within or without the state. Specifically excluded from URLTA coverage are those rental agreements in which residence is incidental to another primary purpose, such as residency in a prison, hospital or college dormitory. Present Maryland law also distinguishes between residential and non-residential rental agreements.

There are sound reasons for adopting a statute applicable only to residential rental agreements. The URLTA is reform legislation which is

The Maryland retaliatory eviction law, Md. Ann. Code, Real Prop. Art., § 8-208.1 (Supp. 1975), specifically applies to mobile home park owners and operators and mobile home dwellers. Should Maryland adopt the URLTA, specific coverage of mobile home parks, where "tenants" own their mobile homes and rent space in the park, as opposed to rental of a mobile home itself, could be insured by reference in either Section 1.202 (Scope and Jurisdiction) or in Section 1.301 (General Definitions). It may be considered more appropriate, however, to enact a separate statute dealing with mobile home park landlord-tenant problems, as has been done in California, Cal. Ann. Civ. Code §§ 789.5-11 (1972), as amended (West Supp. 1975); Florida, Fla. Stat. Ann., Civ. Prac. & Proc. §§ 83.69-72 (Supp. 1975-76); Massachusetts, Mass. Ann. Laws 140, §§ 32J-Q (Supp. 1974); and New York, N.Y.R.P. Law § 233 (McKinney Supp. 1975). The 1975 Regular Session of the Maryland General Assembly considered such a bill. H.B. 459 Regular Sess. (1975). H.B. 459 passed both the House and Senate, but in slightly different versions, and so was not enacted. A similar bill, S.B. 14, has been filed in the 1976 Regular Session of the Maryland General Assembly. For a general treatment of the mobile home issue, see Note, The Community and the Park Owner Versus the Mobile Home Park Resident: Reforming the Landlord-Tenant Relationship, 52 Boston U.L. Rev. 810 (1972).


36. Section 1.202 of the URLTA provides:

[Exclusions from Application of Act.] Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

(1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel, or motel [or lodgings [subject to cite state transient lodgings or room occupancy excise tax act] ];

(5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(7) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

The Comment to Section 1.202 of the URLTA specifies that the URLTA "applies to roomers and boarders but is not intended to apply to transient occupancy. In many jurisdictions transient hotel operations are subject to special taxes and regulations and, where available, determinations under such authority constitute appropriate criteria."

37. Maryland's landlord-tenant legislation is found Md. Ann. Code, Real Prop. Art., §§ 8-101 et seq. (1974) [hereinafter referred to as the "Maryland Real Property Article."] Many aspects of landlord-tenant relationships, however, are not addressed by this statute; in these areas Maryland generally follows the common law.
intended to remedy the problems imposed on modern urban residential landlords and tenants by outmoded legal theories. The problems are aggravated by a housing shortage that places the parties to a rental agreement in an unequal bargaining position. In the case of commercial leases, however, a presumption of equal bargaining power is usually valid, and the parties are more likely to draft an equitable agreement despite the inequities in their positions. These different problems encountered by residential and commercial tenants in their relationships with their respective landlords require different legal rules governing their rights, duties and remedies.

IV. LANDLORD'S DUTIES AND TENANT'S REMEDIES

A. Landlord's Duty to Deliver and Maintain the Premises in a Habitable Condition

1. Common Law

Under the common law, in the absence of a contrary lease provision, the landlord had no duty to deliver and maintain the premises in a safe and habitable condition. This rule was based on the common law doctrine of caveat emptor, and had as its premise the concept that the tenant could inspect the premises, and enter into a rental agreement or look elsewhere.

Subtitle Two of Title Eight of the Maryland Real Property Article is applicable only to "residential leases," a term which is not defined. Subtitle Two contains provisions regarding security deposits, Md. Ann. Code, Real Prop. Art., § 8-203 (Supp. 1975), amending § 8-203 (1974); retaliatory eviction, Id. § 8-208.1 (Supp. 1975); rent escrow, Id. § 8-211 (Supp. 1975); prohibited lease provisions, Id. § 8-208 (Supp. 1975); and mitigation of damages, Id. § 8-207 (1974).

Subtitles One, Three and Four of Title Eight of the Maryland Real Property Article apply to landlord-tenant relationships in general and are not restricted to residential lease agreements. Sections 8-115 and 8-116 pertain to agricultural tenancies.

Section 8-110(a) (Redemption of certain reversions) may provide some guidance as to the definition of "residential" leases for landlord-tenant purposes in Maryland. This Section "does not apply to leases of property leased for business, commercial, manufacturing, mercantile or industrial purposes or any other purpose which is not primarily residential, where the term of the lease, including all renewals provided for, does not exceed 99 years." A lease of an entire condominium, co-operative or other building for multiple-family use on the property is defined as having a business and not a residential purpose. The term "multiple-family use" is defined as excluding "any duplex or single-family structure converted to a multiple-dwelling unit."

The application of particular sections of Title Eight of the Maryland Real Property Article to residential leases will be discussed as appropriate in the course of this article.

See text accompanying footnotes 15-24 supra.

The unequal bargaining position between residential landlords and tenants is due also to the tendency of urban residential landlords to use standardized leaseforms, developed by landlords' associations and organizations.


There were some exceptions to this application of the doctrine of *caveat emptor* to tenants: the common law did require the landlord to deliver residential premises in a safe and habitable condition in the case of a short-term lease of furnished premises;\(^4\) or where the premises were under construction at the time of the execution of the lease agreement.\(^4\) The common law also recognized an exception where the landlord had fraudulently concealed the condition of the premises from the tenant prior to the execution of the rental agreement;\(^4\) or where the defects were known to the landlord and could not be discovered by the tenant upon reasonable investigation and inspection of the premises.\(^4\) These exceptions were recognized because in each of these circumstances, tenants could not be expected to discover the defects by inspecting the premises prior to entering into the lease agreement.\(^4\)

The common law did impose upon the landlord the duty to guarantee the tenant's quiet enjoyment of the premises.\(^4\) This implied covenant prohibited the landlord and his agents from interfering with a tenant's enjoyment, use and possession of the premises.\(^4\) However, the landlord was not responsible for the acts of wrongdoers such as other tenants who were not his agents or employees.\(^4\) Under the doctrine of constructive eviction,\(^4\) the landlord's breach of the covenant of quiet enjoyment justified the tenant in ceasing to pay rent, if he first abandoned the premises and terminated the lease.\(^4\) Some courts extended this doctrine, holding that a landlord can constructively evict a tenant by failing to provide essential services such as heat, water or electricity.\(^4\) Most courts, however, have held that a tenant's only means to escape liability for payment of rent under the doctrine of constructive eviction is to vacate the premises and terminate the

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44. Smith v. Walsh, 92 Md. 518, 48 A. 92 (1901).
45. *Id.*
47. Sigmund v. Howard Bank, 29 Md. 324 (1868).
50. Grabenhorst v. Nicodemus, 42 Md. 236 (1875); See Dyett v. Pendleton, 8 Cow. 727 (N.Y. 1826).
52. Automobile Supply Co. v. Scene-In-Action Corp., 340 Ill. 196, 172 N.E. 35 (1930); Giddings v. Williams, 336 Ill. 482, 168 N.E. 514 (1929). *But see Rhynhart, Notes on the Law of Landlord and Tenant*, 20 Md. L. Rev. 1, 25 (1960), stating that Maryland joins the majority of states in declining to adopt the theory that constructive eviction serves to suspend the tenant's duty to pay rent.
lease; if the tenant continues to reside in the premises, he continues to be liable for payment of rent.53

The common law imposed no implied duty on the landlord to repair or maintain the premises after the tenant took possession.54 Although the rental agreement could expressly impose this duty upon the landlord,55 the tenant usually was obligated to pay rent despite the landlord’s breach.56 The tenant’s only remedy was to counterclaim against the landlord for damages for breach of this covenant when the landlord sued for rent due and payable.57

Recently some courts, reflecting a changing attitude toward landlord-tenant relations, have imposed affirmative duties upon landlords to deliver and maintain residential rental premises in a safe and habitable condition. In Brown v. Southall Realty Co.,58 the District of Columbia Court of Municipal Appeals held that a lease is subject to the principles of contract law, and that a lease is void when executed by a landlord who has knowledge that the premises contain defects constituting violations of housing code regulations regarding the habitability and safety of the premises.59 Under these circumstances the tenant is not required to pay rent to the landlord.60 Brown does not recognize an implied warranty of habitability, however, and thus only the tenant who vacates the premises is released from the duty to pay rent. The Brown decision does not provide a remedy for the urban dweller who cannot afford to vacate or who does not want to vacate. When the contract is declared void, due to the violation, the tenant becomes a tenant at sufferance who can be evicted by a landlord after notice to quit.61

In Javins v. First National Realty Corp.,62 the United States Court of Appeals for the District of Columbia solved the inadequacies of the Brown remedy by holding that the tenant whose landlord breaches the implied warranty of habitability may either abandon the premises or remain in possession and have his rent reduced by an appropriate


56. Brady v. Brady, 140 Md. 403, 117 A. 882 (1922). However, if the parties intended to make the covenant to repair and the covenant to pay rent interdependent, the tenant would be released from his duty to pay the rent upon the landlord’s breach. Id.

57. Tyson v. Weil, 169 Ala. 558, 53 So. 912 (1910); Hausman v. Mulheran, 68 Minn. 48, 70 N.W. 866 (1897); Pewaukee Milling Co. v. Howitt, 86 Wis. 270, 56 N.W. 784 (1893).


59. The court held that the lease was void under the rule that contracts executed in violation of a public statute or ordinance are void. Id. at 837.

60. Id. at 835.


amount. 63 The Javins court further held that duties imposed upon the landlord under the implied warranty of habitability may not be waived by the tenant or shifted by the rental agreement, 64 and that the implied warranty of habitability exists not only at the beginning of the tenancy, but also during the term of the rental agreement. 65

Other courts 66 have recognized an implied warranty of habitability that requires a landlord to deliver the premises, and to maintain them during the term of the rental agreement, in a safe and habitable condition. These courts have found a breach of the implied warranty of habitability when substantial violations of housing and building codes occurred or when defects existed that substantially affected the health, safety, or well-being of a tenant. For example, a breach of the implied warranty of habitability has been found when the landlord failed to provide heat, hot water, or essential services; 67 or when the premises were infested by rodents. 68 On the other hand, leaks in water faucets, cracks in walls, or unpainted walls (or other conditions affecting the aesthetics or amenities of the premises) do not constitute a breach of the implied warranty of habitability according to some decisions. 69

Many of the courts that recognize the warranty of habitability have also recognized, like Javins, that the landlord's breach of duties imposed by the implied warranty of habitability entitles the tenant to a choice of remedies, including the right to terminate the lease, 70 and the right to abatement of part or all of the rent. 71

63. Id. at 1082-83.
64. Id. at 1081-82.
65. Id. at 1081. Javins reached this result after holding that urban residential rental premises are subject to a warranty of habitability implied from housing code regulations and measured by the standards set forth in the housing code during the term of the lease, and that these leases should be interpreted and construed under contract principles. Id. at 1075.

The first court to hold that a landlord has an implied duty to deliver the premises in a habitable condition was the Wisconsin Supreme Court. Pines v. Perssion, 14 Wis. 2d 590, 111 N.W.2d 409 (1961). The Pines court departed from the common law principle of caveat emptor, ruling that the premises are subject to a warranty of habitability implied from local housing and building codes, which requires the landlord, at the inception of the lease, to deliver the premises in a habitable condition. The court held that the tenant's duty to pay rent and the landlord's duty to deliver habitable premises are mutually dependent, and that a breach by the landlord of his duty relieves the tenant from liability for payment of rent. Where the landlord is in breach, the tenant may vacate the premises and terminate the lease, and is liable only for the reasonable rental value of the premises during his actual occupancy.

2. Maryland Law

The Maryland courts have not yet recognized an implied warranty of habitability in residential leases. However, Section 8-203.1(a)(2)(i) of the Real Property Article of the Maryland Annotated Code does provide a limited warranty "that the premises will be made available in a condition permitting habitation, with reasonable safety . . . ." This provision is limited by the fact that it may be modified or excluded by the lease and is applicable only if a landlord "offers more than four dwelling units for rent on one parcel of property or at one location and . . . rents by means of written leases . . . ."

Maryland's rent escrow statute also deals with the landlord's duty to provide habitable premises. This Statute gives tenants remedies for defects in the premises that present "a serious and substantial threat to the life, health or safety of the occupants." Enacted in 1975, the rent escrow statute provides a variety of methods for dealing with housing defects. The tenant, however, may not exercise these remedies until he has given the landlord written notice of the defects and a reasonable period of time to effect the repairs himself. Nor are the remedies available to tenants who have previously received a specified number of summonses for rent due and unpaid or where the defects are caused by the tenant, his family, agents, employees, or social guests.

When the landlord has failed to cure defects after notice and opportunity to cure, the tenant may either bring a rent escrow action in court, paying his rent into court, or raise the landlord's failure to act as a defense in a suit for possession for non-payment of rent or in a suit for rent due and unpaid. Whether the tenant raises this issue affirmatively or defensively, the court is given wide discretion to order appropriate relief, which may include termination of the lease,

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73. Id. This Section also requires that the lease set forth "[t]he landlord's and tenant's specific obligations as to heat, gas, electricity, water, and repair of the premises." Id. This duty may not be waived.
75. Md. Ann. Code, Real Prop. Art., § 8-211(a) (Supp. 1975). The Maryland statute provides an inexhaustive list of defects that meet these standards including lack of heat, light, electricity, hot or cold running water, adequate sewage disposal facilities, and presence of paint containing lead pigments. Id. §§ 8-211(e)(1)-(6). On the other hand, the Section specifically excludes a remedy for certain defects, such as small cracks in the walls, floor or ceiling, conditions reducing the aesthetic value of the premises, lack of linoleum or tiles on the floors, or the absence of air conditioning. Id. §§ 8-211(f)(1)-(4).
76. This statute applies to all publicly and privately-owned residential dwellings, but not to farm tenancies. Id. § 8-211(c).
77. Id. § 8-211(h).
78. Id. § 8-211(k)(3).
79. Id. § 8-211(1).
80. Id. § 8-211(k)(2).
81. Id. § 8-211(i).
82. Id. § 8-211(m)(1).
abatement of rent,\textsuperscript{83} or payment of the rent escrow to the landlord, the tenant, or a court-appointed administrator to effect the necessary repairs.\textsuperscript{84}

3. URLTA

The URLTA accepts the implied warranty of habitability doctrine as defined by \textit{Javins},\textsuperscript{85} providing in Section 2.104 a warranty of habitability arising at the inception of the tenancy and continuing until its termination, which requires the landlord to deliver and maintain the premises in a habitable condition. The landlord's liability under the URLTA and lease provisions is relieved at the time of a good faith sale to a bona fide purchaser.\textsuperscript{86} Section 2.104 follows the pattern set in \textit{Javins} by requiring that landlords comply with local building and housing code provisions materially affecting health and safety. The landlord is required to comply with the stricter standards of the housing and building codes when they impose greater duties than those specified by Section 2.104.\textsuperscript{87}

The specific duties imposed upon landlords by the URLTA are found in Section 2.104(a)(4) and include a duty to: maintain and repair electrical, plumbing, sanitary, heating, ventilation, air conditioning, and other services provided by the landlord;\textsuperscript{88} provide and maintain receptacles for waste and to arrange for its removal;\textsuperscript{89} and provide tenants with reasonable amounts of water and heat unless the dwelling unit receives these services from an installation within the "exclusive control of the tenant and supplied by a direct public utility connection," or unless the landlord is not required by other law to provide these services.\textsuperscript{90} Section 2.104(a)(3) of the URLTA adopts the common law doctrine that the landlord is required to maintain common areas in a safe and clean condition.

Although the landlord and tenant of a single-family dwelling unit may agree in writing that the tenant will perform the landlord's duties with respect to trash removal and provision of water and heat, as well as perform specified repairs, maintenance tasks, alterations, or remodeling,\textsuperscript{91} the URLTA specifies that these agreements must be entered in good faith.\textsuperscript{92}

\textsuperscript{83} \textit{Id.} § 8-211(m)(3).
\textsuperscript{84} \textit{Id.} §§ 8-211(n)(2), (3). Section 8-403 requires the tenant to pay rent into escrow of a court or appropriate administrative agency where the tenant and landlord are before the court in a rent due and payable summary ejectment action (\textit{Id.} § 8-401) or a holding over action where a long adjournment is ordered (\textit{Id.} § 8-402).
86. URLTA § 2.105. A successor in interest would be subject to the landlord's duty to maintain the premises of existing tenants in a habitable condition. \textit{See Id.} § 1.301(5).
87. \textit{Id.} § 2.104(b).
88. \textit{Id.} § 2.104(a)(4).
89. \textit{Id.} § 2.104(a)(5).
90. \textit{Id.} § 2.104(a)(6).
91. \textit{Id.} § 2.104(c).
92. \textit{Id.}
Landlords and tenants of any dwelling units other than single-family residences also may agree that the tenant will perform specified repairs, remodeling, alterations or maintenance tasks, provided that the agreement is in good faith and supported by adequate consideration and is in a writing separate from the lease. However, these agreements may not require the tenant to perform work necessary to cure building or housing code violations, may not diminish the landlord's responsibilities and duties to other tenants on the premises, and may not condition the landlord's performance of his duties under the lease upon the tenant's performance of the separate agreements. These URLTA sections have been criticized because they require the landlord to continue providing services to a tenant who has failed to perform his agreed tasks.

The URLTA provides a tenant with a number of remedies when the landlord breaches his duties under the rental agreement or under Section 2.104 to maintain the premises. The remedies vary depending upon the seriousness of the hazard caused by the landlord's breach.

Section 4.101 of the URLTA provides that the tenant may terminate the lease, subject to certain conditions, for any material non-compliance by the landlord with the rental agreement or any non-compliance with the warranty of habitability of Section 2.104 materially affecting health and safety. In order to exercise this remedy, the tenant must give written notice to the landlord specifying the acts and omissions constituting the default and notifying the landlord that the rental agreement will terminate not less than 30 days after his receipt of notice if the breach is not remedied within 14 days. If substantially the same breach recurs within six months, the tenant may terminate the rental agreement 14 days after he has given written notice to the landlord specifying the breach and date of termination. This remedy is not available for conditions caused by the complaining tenant or other persons on the premises with his consent.

In addition to terminating the lease, the tenant may recover damages and obtain injunctive relief for any non-compliance by the landlord with the rental agreement or with the landlord's obligation to deliver

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93. Id. § 2.104(d)(1).
94. Id. § 2.104(d)(2).
95. Id. § 2.104(d)(3).
96. Id. § 2.104(e).
98. The URLTA does not require a tenant to elect a remedy unless he proceeds under Section 4.104, in which case he may not proceed under Section 4.101 or 4.103 with respect to that breach. Id. § 4.104(c). In some circumstances, the tenant may utilize several remedies in conjunction.
100. Id. § 4.101(a)(2).
101. Id. § 4.101(a)(3). "If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under Section 2.101 and all prepaid rent." Id. § 4.101(d).
and maintain a fit premises. If the landlord’s non-compliance is willful, the tenant may recover reasonable attorney’s fees.

Section 4.103 of the URLTA would provide an additional remedy by changing the common law to authorize the tenant to have repairs made himself when their cost is less than $100.00 or one half the periodic rent, whichever is greater. If the tenant elects this remedy he must give the landlord notice in writing of his intention to correct the defect and give the landlord an opportunity to cure the defect. The landlord must cure within 14 days or “as promptly as conditions require in case of emergency.” Any repairs must be done in a workmanlike manner, and must be reasonable. After submitting an itemized statement to the landlord, the tenant may deduct the cost of repairs from his next rent payment. This remedy is not available when the condition is caused by the tenant, his family, or other persons on the premises with his consent.

Section 4.104 of the URLTA also provides a choice of specific remedies for the landlord’s willful or negligent failure to supply the heat, water (hot or cold) or other essential services required by the rental agreement or Section 2.104. Under this Section, the tenant, after giving written notice to the landlord, may procure essential services and deduct their reasonable cost from the rent, recover the diminution in the fair rental value of the premises, or procure reasonable substitute housing during the landlord’s non-compliance, be excused from rent during this period, and collect damages for the reasonable value of the substitute housing up to the amount of the periodic rent, plus reasonable attorney’s fees.

These remedies differ from those specifically authorized by the Maryland rent escrow statute in several respects. The tenant under Section 4.104 of the URLTA does not have the option of affirmatively paying his rent into a rent escrow fund in court. Furthermore, the Maryland rent escrow statute does not require that the landlord act willfully or negligently. The remedy under the Maryland statute is

102. Id. §§ 4.101(b), (c).
103. Id. § 4.101(b).
104. Id. § 4.103(a).
105. Id.
106. Id. § 4.103(a).
108. URLTA § 4.103(a).
109. Id. § 4.103(b).
110. A tenant proceeding under Section 4.104 may not also proceed under Section 4.101 or Section 4.103. Id. § 4.104(c).
111. No period for cure of the breach by the landlord is provided in this section.
112. URLTA § 4.104(a)(1).
113. Id. § 4.104(a)(2).
114. Id. § 4.104(a)(3).
115. Id. § 4.104(b).
based upon the condition of the premises alone.\textsuperscript{116} The Maryland rent escrow statute does not provide for damages or attorney's fees.

One criticism of Section 4.104 is that the landlord is required not only to pay the cost of repairs but also to pay damages to his tenants for their expenses in procuring substitute services.\textsuperscript{117} This could force or influence a number of landlords to forego repairs on their premises and to abandon them, resulting in abandonment of a great number of multi-unit residential dwellings, particularly in inner city areas where landlords' profits are often marginal.\textsuperscript{118} Maryland's rent escrow statute, by requiring judicial supervision and authorization of repairs with rent funds, seems to be more fair than the URLTA for both landlords and tenants.

Under Section 4.105 of the URLTA, the landlord's non-compliance with the rental agreement or the URLTA is a defense or basis for a counterclaim in a landlord's suit for possession for non-payment of rent or for unpaid rent while the tenant is in possession.\textsuperscript{119} Section 4.105(a) authorizes the court to require the tenant to pay all or part of the rent into court and to determine the amount due each party, thus impliedly authorizing the court to abate or reduce the rent where appropriate.\textsuperscript{120} This procedure under Section 4.105 parallels the procedure under the Maryland rent escrow statute where the tenant elects to withhold his rent and raise the landlord's conduct as an affirmative defense in a suit for possession for non-payment of rent, for collection of unpaid rent, or for distress for rent. Under the Maryland rent escrow statute, however, a defense is available only in situations where the conditions of the premises substantially affect health and safety.\textsuperscript{121} The Maryland rent escrow statute does not allow a tenant to raise the landlord's conduct as a counterclaim in an action by the landlord to recover possession or to collect rent due and payable. In

\textsuperscript{116} Mo. Ann. Code, Real Prop. Art., § 8-211(e) (Supp. 1975). Both the Maryland statute, Id. § 8-211(d), and Section 4.104(d) of the URLTA provide no remedy to the tenant when the condition was caused by acts of the tenant, his family, or guests.

\textsuperscript{117} Note, Uniform Residential Landlord and Tenant Act, 8 Real Prop., Prob. & Trust J., 104 at 117.

\textsuperscript{118} Id. at 118.

\textsuperscript{119} URLTA § 4.105(a). "If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees." Id. In the phrase "in an action for rent when the tenant is in possession" in Section 4.105(a), it is not clear whether "possession" refers to "legal" possession or to actual physical possession. ("Legal possession" means the right to possession under the lease during the term of the lease.) The difference is important, because if the tenant has legal possession he should be made to pay rent, even if he does not actually occupy the leased premises, unless he has a valid counterclaim or defense against the landlord. On the other hand, if the tenant has validly terminated the lease under the Act due to the landlord's non-compliance with provisions of the rental agreement or the URLTA, but the tenant continues to reside on the premises as a holdover tenant, the tenant should still be liable for rent. See URLTA § 4.301(c), discussed in text accompanying notes 354-60 infra.

\textsuperscript{120} "In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (a) but is not required to pay rent into court." URLTA § 4.105(b).

\textsuperscript{121} See text accompanying notes 74-84 supra.
addition, Maryland’s rent due and payable summary ejectment statute and holding over statute do not specifically allow a tenant to file a counterclaim against the landlord when the landlord brings an action for possession or for rent.

If a landlord unlawfully removes or excludes the tenant from the leasehold premises, or purposefully diminishes or interrupts essential services (such as heat, water, electricity, or gas), the tenant has a remedy under Section 4.107 of the URLTA. Section 4.107 appears to codify the common law prohibition against constructive evictions of a tenant by interrupting essential services. The tenant under Section 4.107 may recover possession or terminate the rental agreement, and in both cases he may recover punitive damages up to three months periodic rent or three-fold actual damages, whichever is greater, plus reasonable attorney’s fees. There is no such statewide statute in Maryland, although the City of Baltimore has a statute specifically prohibiting a landlord from reducing essential services.

Objection has been expressed to these provisions of the URLTA and to the Maryland rent escrow statute on the grounds that they may cause landlords to abandon residential rental dwellings because of the extensive duties imposed upon the landlord to deliver and to maintain residential rental premises in a safe and habitable condition. Except with respect to the self-help remedies of Section 4.103 of the URLTA, however, the URLTA and the Maryland rent escrow statute only apply to conditions substantially or materially affecting the health and safety of tenants, such as lack of heat, hot or cold running water, electricity, and adequate sewage disposal facilities. Tenants should be entitled to such basic necessities at a minimum as an implicit part of a lease contract for the rental of residential premises.

Fear of abandonment of residential rental housing has not prevented a number of states, either through court decision or legislative enactment, from recognizing an implied warranty of habitability in the lease of residential premises. The recently enacted Maryland rent escrow statute, which provides similar remedies to those provided under the URLTA, is modeled after the Baltimore City rent escrow ordinance, which has been in existence for almost five years and has apparently satisfied landlords and tenants as being fair legislation.

123. Id. § 8-402 (1974).
124. URLTA § 4.107 provides a remedy for a landlord’s violation of § 4.207, which provides:

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this Act.

125. Pub. L. L. of Md., art. 4, § 39-15 (1971). Under this public local law, Baltimore City may fine the landlord $50.00 or imprison him for 10 days, or both, for reducing the essential services to which the tenant is entitled without the tenant’s consent.
B. Landlord's Duty to Deliver Possession

Both Maryland\textsuperscript{127} and the URLTA\textsuperscript{128} follow the majority English rule requiring the landlord to deliver actual possession of the premises, rather than the minority American rule requiring the landlord only to convey the legal right to possession, with no obligation to ensure actual possession when third parties wrongfully exclude the tenant.\textsuperscript{129}

In Maryland, when the landlord fails to provide the tenant with possession of the dwelling unit at the beginning of the term of the lease, the rent abates until delivery of possession.\textsuperscript{130} Maryland authorizes a tenant to terminate the lease when his landlord fails to provide him with possession at the beginning of the lease term, by giving the landlord written notice before possession is delivered.\textsuperscript{131} When the lease is terminated by the tenant, "the landlord is liable for all money or property given as prepaid rent, deposit or security."\textsuperscript{132} In addition to, or instead of, terminating the lease, the tenant may recover from the landlord "consequential damages actually suffered by him subsequent to the tenant's giving notice to the landlord of his inability to enter on the leased premises."\textsuperscript{133}

The URLTA similarly provides that when the landlord fails to deliver possession at the beginning of the term, the rent abates until possession is delivered,\textsuperscript{134} and the tenant may terminate the lease after giving the landlord at least five days' written notice.\textsuperscript{135} The URLTA would slightly weaken a tenant's rights in Maryland when the landlord fails to deliver possession, since the tenant in Maryland may terminate the lease immediately upon written notice after the landlord fails to deliver possession at the beginning of the term. This difference, however, is not material, because rent is abated until the landlord delivers possession both under the Maryland statute and under the URLTA, and because the landlord has no right under the URLTA to cure his breach after the tenant gives him written notice.

Like the Maryland statute, the URLTA requires a landlord to return all prepaid rent and security after the tenant terminates the lease.\textsuperscript{136} Instead of terminating the lease, the URLTA authorizes the tenant to recover possession and actual damages from the landlord, after demanding performance of the rental agreement.\textsuperscript{137} The URLTA would thus limit the tenant's remedies under the Maryland statute, which authorizes a tenant both to terminate the lease and to recover

\textsuperscript{127} MD. ANN. CODE, Real Prop. Art., § 8-204 (1974).
\textsuperscript{128} URLTA §§ 2.103, 4.102.
\textsuperscript{129} See I AMERICAN LAW OF PROPERTY § 3.37.
\textsuperscript{130} MD. ANN. CODE, Real Prop. Art., § 8-204(c) (1974).
\textsuperscript{131} Id.
\textsuperscript{132} Id. § 8-204(d).
\textsuperscript{133} Id. § 8-204(e).
\textsuperscript{134} URLTA § 4.102(a).
\textsuperscript{135} Id. § 4.102(a)(1).
\textsuperscript{136} Id.
\textsuperscript{137} Id. § 4.102(a)(2).
actual damages from the landlord. Unlike the Maryland statute, the URLTA also incorporates the tenant’s common law right to recover possession and actual damages from the person wrongfully in possession.

The URLTA also authorizes recovery of punitive damages in an amount not more than three months’ periodic rent or three times the actual damages, plus reasonable attorney’s fees, by an “aggrieved person” from a person whose “failure to deliver possession is willful and not in good faith.” It is not clear, however, whether the URLTA entitles the landlord or the tenant to recover punitive damages from the person wrongfully in possession. The Maryland statute does not authorize a tenant to recover punitive damages.

C. Landlord’s Duty to Prevent Unsafe Conditions in Common Areas

The Maryland common law imposes on a landlord the duty to use ordinary and reasonable care to prevent unsafe conditions in common areas; the landlord’s breach gives rise to an action for damages by an injured party who was lawfully in the common area. By providing that remedies are to be administered so that aggrieved parties, including

139. URLTA § 4.102(a)(2).
140. URLTA § 4.102(b).

Both Maryland and the URLTA prohibit the landlord from exculpating his tort liability to persons injured in the common areas. The URLTA generally prohibits a rental agreement from containing a provision that the tenant “agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.” URLTA § 1.403(a)(4). Maryland makes void any lease provision that would exculpate the landlord from liability to any tenant or other person injured in the common areas, Md. Ann. Code, Real Prop. Art., § 8-105 (1974), and authorizes recovery of actual damages and attorney’s fees by a tenant if a landlord tenders a lease to a tenant which contains a void provision or attempts or threatens to enforce a void provision. Id. § 8-208(c)(2) (Supp. 1975). Maryland, however, does not prohibit the inclusion in a lease of a void provision. Id. § 8-208(a).

A tenant also has a duty to use reasonable care to prevent unsafe conditions on the premises that might injure third parties that is little different from the duty of any other possessor of land. See Restatement (Second) of Torts §§ 328-44. Cf. Matyas v. Suburban Trust Co., 257 Md. 339, 263 A.2d 16 (1970), where the court held that a provision in a commercial lease that the tenant would clear ice from a sidewalk did not entitle a person, who fell on ice and was injured while going to do business with the tenant, to recover in tort against the tenant as a third party contract beneficiary for the tenant’s failure to perform this duty under the lease. Cf. Md. Ann. Code, Real Prop. Art., § 8-323 (1974), which authorizes a third party, whose goods are distrainted and sold under a distress for rent action by a landlord, to bring an action against the tenant to recover damages. (Section 4.205(b) of the URLTA abolishes distress for rent.) The text accompanying notes 252-59 infra, discusses the liability of a tenant to other tenants and to neighbors for disturbing the enjoyment of their premises.
third parties, may recover appropriate damages,\textsuperscript{142} the URLTA implicitly affirms this common law rule and thus would make no change in the Maryland law.

\textbf{D. Landlord’s Duty to Disclose}

Although there is no common law authority requiring a landlord to disclose to his tenants the name and address of the owner or manager of the rental building, both the URLTA\textsuperscript{143} and Maryland statute\textsuperscript{144} require disclosure of this information, apparently so that tenants will know who is responsible for the obligations imposed upon the landlord by law and against whom to proceed.\textsuperscript{145}

Maryland stipulates that the owner must post a sign listing the name, address and telephone number of the owner or management entity in a conspicuous place on residential rental property.\textsuperscript{146} This information may be provided in the written lease or in the rental receipt, in lieu of posting.\textsuperscript{147} Section 2.102 of the URLTA requires disclosure in writing to the tenant of the names and addresses of the owner or his agent and the manager of the premises at or before the commencement of the tenancy, but does not otherwise specify how disclosure should be made. The agent of a landlord who does not comply with the URLTA disclosure requirements assumes the landlord’s duties under the statute and the rental agreement, including the duty to apply all rent collected to maintain and repair the premises.\textsuperscript{148} A requirement that disclosure be made in the lease and by posting would be a wise addition to both the Maryland statute and the URLTA, since a tenant may misplace his copy of the lease or may be a periodic tenant without a written lease.

There is no common law authority requiring landlords who rent by means of written leases to provide copies of the lease form to prospective tenants or to provide copies of the lease to tenants who have executed the lease. In Maryland, a landlord “who offers more than four dwelling units for rent on one parcel of property or at one location and who rents by means of written leases” is required to provide a copy of the lease form to any prospective tenant upon written request, “without requiring execution of the lease or any prior deposit. . . .”\textsuperscript{149} The URLTA does not contain even this limited requirement.

Unless prospective tenants and tenants who have executed a written lease are provided with a copy of the lease form they are unable to properly review it and evaluate their rights and duties under the lease and those of their future landlord. A requirement that a copy of the

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{142} URLTA § 1.105(a).
\item \textsuperscript{143} URLTA § 2.102.
\item \textsuperscript{145} URLTA § 2.102, Comment.
\item \textsuperscript{147} Id.
\item \textsuperscript{148} URLTA § 2.102(c).
\end{enumerate}
\end{footnotesize}
lease be made available would not impose an unreasonable burden upon landlords if they are allowed to charge a reasonable fee for the copies and if the landlord is not required to provide a copy of the lease form until a prospective tenant has complied with reasonable application requirements. If the URLTA is adopted by Maryland, the Act should be amended to include this requirement.

E. Security Deposits

Prior to the execution of the lease or entry into possession of the premises by the tenant, landlords frequently require that the tenant deposit with them money or other items of value to secure the landlord against damages caused by any breach of covenants or conditions of the lease by the tenant. Courts have usually held that the relationship between the landlord and tenant with respect to such a security deposit is that of debtor and creditor, thus allowing the landlord to mingle the security deposit with his own funds. Under this view, the tenant has no preference in event of the landlord’s bankruptcy. A few courts, however, have viewed the relationship as that of pledgor and pledgee, thus placing the landlord in a position of trust to the tenant with respect to the handling of the security deposit.

A related issue is whether the landlord or his assignee is liable for return of the security deposit to a tenant after the landlord has conveyed the reversion to an assignee. Courts are split as to whether the original landlord or his assignee is liable to the tenant for the security deposit under the common law.

A landlord will often attempt to keep the security deposit if the tenant breaches or prematurely terminates the lease, by labeling the security deposit as either “consideration” for the execution of the lease or “advance rent.” However, the courts have tended to construe the security deposit provisions strictly and to interpret them as liquidated damages clauses, which are not upheld if they appear to impose a penalty. If a liquidated damages clause is held invalid the landlord is entitled to withhold only actual damages from the security deposit.

150. Reasonable application requirements should not include payment of any deposit or fee for execution of the lease.

151. See 1 American Law of Property § 3.73; 16 Ariz. L. Rev. 79, 96-100.

152. E.g., Handle v. Real Estate Land Title & Trust Co., 316 Pa. 116, 173 A. 313 (1934). See 1 American Law of Property § 3.73.

153. Id.

154. In re Banner, 149 F. 936 (S.D.N.Y. 1907). See 1 American Law of Property § 3.73.

155. E.g., Partington v. Miller, 122 N.J.L. 388, 5 A.2d 468 (1939). See 1 American Law of Property § 3.73.

156. See 1 American Law of Property § 3.73.

157. See Wm. Filene’s Sons Co. v. Weed, 245 U.S. 597 (1918). See also 1 American Law of Property § 3.73; 16 Ariz. L. Rev. 79, 98-100.


159. See Burns Trading Co. v. Welborn, 81 F.2d 691 (10th Cir. 1936); Barrett v. Monro, 69 Wash. 229, 124 P. 369 (1912). A liquidated damages provision is held invalid as a penalty when forfeiture occurs upon the breach of any of various covenants; when the amount of
In response to these problems, both the URLTA\textsuperscript{161} and Maryland\textsuperscript{162} have enacted statutes that govern the amount, disposition and return of security deposits. The URLTA allows money or property, however denominated, to be required as a security deposit,\textsuperscript{163} while a security deposit under the Maryland statute is limited to money.\textsuperscript{164} The URLTA limits the amount of the security deposit to one month’s periodic rent,\textsuperscript{165} while Maryland limits the amount to the larger of two months’ rent or $50.\textsuperscript{166} The Maryland statute specifically makes this a maximum amount for each dwelling unit, regardless of the number of tenants in a dwelling unit.\textsuperscript{167} The URLTA is unclear as to this matter. The maximum security deposits under the URLTA and the Maryland statute are essentially the same, however, since Maryland permits a landlord to include payment of the last month’s rent as part of the security deposit,\textsuperscript{168} while the URLTA does not include prepaid rent within the definition of a security deposit.\textsuperscript{169}

Unlike the URLTA, the Maryland statute requires a landlord, if requested, to give the tenant a list of all existing damages within 15 days of occupancy.\textsuperscript{170} In Maryland, written leases or the receipt for the security deposit must inform the tenant of his right to request this list of existing damages.\textsuperscript{171} Both the Maryland statute\textsuperscript{172} and the URLTA\textsuperscript{173} require the landlord to provide the tenant with an itemized accounting of any damages claimed by the landlord that are withheld from the security deposit. The Maryland statute requires a statement of “the cost actually incurred” by the landlord due to such damages,\textsuperscript{174} while the URLTA refers only to “accrued rent and the amount of damages.”\textsuperscript{175} The URLTA requires that the itemized accounting and the amount due the tenant from the security deposit after deducting accrued rent and damages be delivered to the tenant within 14 days of the termination of the tenancy;\textsuperscript{176} the Maryland statute requires an
accounting within 30 days after the termination of the tenancy and requires the return of the amount due to the tenant within 45 days after termination of the tenancy.

The URLTA permits the landlord to apply the security deposit to payment of accrued rent and to damages to the premises caused by the tenant's failure to maintain the premises as required by Section 3.101. The Maryland statute, while permitting the landlord to apply the security deposit to the payment of unpaid rent and to "damage to the leased premises by the tenant, his family, agents, employees, or social guests in excess of ordinary wear and tear," also allows the landlord to apply the security deposit to payment of damage due to breach of the lease. Under the Maryland statute, however, the security deposit may not be forfeited as liquidated damages; the landlord is entitled to withhold only the damages caused by the tenant's breach of the lease. In calculating damages under the Maryland statute, the landlord must consider any rent received from a second tenant during the remainder of the term of the first tenant who has abandoned the premises and failed to pay rent for the remainder of the term.

The URLTA is unclear as to whether the landlord or his assignee, or both, are liable to the tenant for the security deposit. Section 2.101(e) provides that "the holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound" by Section 2.101. This requirement may be interpreted to make the landlord's assignee personally liable to the tenant for the security deposit even though the initial landlord has retained it. In addition, the URLTA continues to

178. Id. § 8-203(f)(1) (1974). Neither the URLTA nor the Maryland statute requires the tenant to give the landlord notice of his change of address if he moves or abandons the premises. This requirement should be included in a security deposit statute so that the landlord will be able to fulfill his duty to give an accounting to the tenant. Maryland law presently requires only that the accounting be sent to the last known address of the tenant. Id. § 8-203(h)(1) (1974).
179. URLTA § 2.101(b). The text accompanying notes 235-51 infra discusses a tenant's duties under Section 3.101 of the URLTA.
181. Maryland gives a tenant the right to be present when the landlord or his agents inspect the premises to determine if they were damaged. Md. Ann. Code, Real Prop. Art., § 8-203(g)(1) (Supp. 1975).
182. Id. § 8-203(g)(i) (Supp. 1975).
183. Id. § 8-203(g)(ii) (1974).
184. Id. § 8-203(g)(3) (1974). In Maryland, a landlord is also subject to a general duty to mitigate damages when a tenant abandons the premises prior to termination of the lease. Id. § 8-207 (1974). See text accompanying notes 411-12 infra.
185. An assignee who is held liable to the tenant under these circumstances presumably will have an action against his assignor pursuant to Section 1.105(a) of the URLTA. Section 1.105(a) of the URLTA provides in pertinent part: "The remedies provided by this Act shall be so administered that an aggrieved party may recover appropriate damages." An
make the landlord liable to the tenant "for all security recoverable by
the tenant under Section 2.101 and all prepaid rent" after assignment
or conveyance of his reversion.\textsuperscript{186}

The Maryland statute provides that any successor in interest is liable
to the tenant for failure to return the security deposit,\textsuperscript{187} and also
places liability on the landlord without discharging him if he conveys to
a successor in interest.\textsuperscript{188} Thus, under both the Maryland statute and
the URLTA, the landlord and his successors in interest apparently are
jointly and severally liable for payment of the security deposit to the
tenant at the termination of the tenancy.

When the landlord wrongfully withholds the amount due, the
URLTA awards the tenant the amount of money or property due plus
reasonable attorney's fees and punitive damages in an amount equal to\textit{twice}
the amount wrongfully withheld.\textsuperscript{189} The Maryland statute
authorizes punitive damages up to\textit{threefold} the amount withheld
"without reasonable basis" after 45 days from termination of the lease,
plus reasonable attorney's fees.\textsuperscript{190} The Maryland statute, however,
unlike the URLTA, also authorizes recovery of damages by the tenant
when the landlord requires a security deposit exceeding the maximum
authorized by statute;\textsuperscript{191} when the landlord fails to provide a written
receipt to the tenant for the security deposit;\textsuperscript{192} and when the
landlord, after written request by the tenant, has failed to provide the
tenant with a written list of existing damages within 15 days of the
tenant's occupancy.\textsuperscript{193}

\textsuperscript{186} assignee under these circumstances should be considered to be an "aggrieved party" who
is entitled to maintain an action for damages against his assignor.
\textsuperscript{187} Md. ANN. CODE, Real Prop. Art., §§ 8-203(e)(3)--(4) (1974). In Maryland, security
deposits are free from any attachment by creditors. Id. § 8-203(e)(3) (1974).
\textsuperscript{188} Id. § 8-203.
\textsuperscript{189} URLTA § 2.105.
\textsuperscript{189} Id. § 8-201(c).
\textsuperscript{190} Id. § 8-203.
\textsuperscript{192} Id. § 8-203(b)(2) (1974). Punitive damages up to threefold the amount by which the
required security deposit exceeded the maximum authorized security deposit is
authorized, plus reasonable attorney's fees.
\textsuperscript{193} Id. § 8-203(c)(2) (1974). Damages in the amount of $25 are authorized.
\textsuperscript{193} Id. § 8-203(d)(2) (1974). Punitive damages up to threefold the amount of the security
deposit are authorized, subject to set-off for damages and unpaid rent that the landlord
"reasonably" could withhold from the tenant.

Section 8-203(h)(2) provides that the landlord forfeits the right to withhold any
part of the security deposit as damages when he fails to send an itemized list of the
damages claimed and actual costs incurred to the tenant within 30 days after termination
of the tenancy.

Section 8-208(c)(2) (Supp. 1975), authorizes a tenant to recover damages and
reasonable attorney's fees from a landlord who has included in the tenant's lease, or
attempted or threatened to enforce, any provision made unenforceable by the security
deposit statute. This Section does not indicate which lease provisions are considered to
be "unenforceable" under the security deposit statute; however, it might be interpreted
to afford a tenant damages when the landlord includes a provision that requires a larger
security deposit than the statute permits. A tenant, therefore, might be able to recover
damages under both Section 8-208(c)(2) and Section 8-203(b)(2) when a landlord
requires a security deposit in an amount greater than permitted by Section 8-203(b)(2).
In addition to imposing penalties upon a landlord for failure to account for security deposit money to a tenant, the Maryland statute seeks to insure that the security deposit is not misappropriated for a purpose other than "to protect the landlord against non-payment of rent or damage to the leased premises."\footnote{194} The landlord in Maryland may not co-mingle security deposit funds with any other monies.\footnote{195} Furthermore, he must give the tenant a receipt for the security deposit\footnote{196} and place the deposit in a banking or savings institution within 30 days after he receives it.\footnote{197}

In addition, the Maryland statute requires a landlord to pay a tenant three percent annual simple interest on security deposits over $50, accruing at six month intervals.\footnote{198} The URLTA fails to address the question of the use and safeguarding of security deposit funds while in possession of the landlord.

The Maryland statute on security deposits is more specific than the URLTA in its requirements for collection of and accounting for security deposit funds and imposes more detailed responsibilities and restraints upon the landlord. Thus, if Maryland enacts the URLTA, its security deposit provisions should be deleted and the present Maryland statute retained.

\section*{V. TENANT'S DUTIES AND LANDLORD'S REMEDIES}

\subsection*{A. Tenant's Duty to Pay Rent}

The fundamental common law obligation of the tenant is to pay rent.\footnote{199} In the absence of an agreement as to the amount of rent, the common law implies an agreement by the tenant to pay a reasonable amount for the use of the premises.\footnote{200} The URLTA codifies the common law rule, providing that in the absence of an agreement between landlord and tenant, "the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit."\footnote{201} The landlord and tenant may agree on any terms and conditions regarding rent not prohibited by the Act.\footnote{202} The amount and terms of payment of rent, therefore, would be subject to the prohibition against "unconscionable" provisions in a lease,\footnote{203} a limitation that would
probably prohibit a landlord from charging an amount of rent that was much above fair market value.

The URLTA provides that rent is payable "without demand or notice" as agreed by the parties; if the parties have not agreed as to the time for payment of rent, "periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month." This provision of the URLTA changes the common law rule that rent is neither due nor payable until the end of the rental period. The URLTA codifies the common law rule that rent is payable at the dwelling unit if the parties do not specify where it is to be paid. Maryland has no statutory provisions regarding the time and place for payment of rent, and would presumably follow the common law.

In Maryland, the landlord has two options when a tenant fails to pay rent. First, he may bring a summary ejectment action to recover possession of the premises and to recover rent due and unpaid. The hearing is held within five days of service of the summons and complaint, and the tenant may be ordered to vacate the premises within two days of judgment. This Maryland statute gives the tenant the right to redemption of the leased premises by paying the landlord, “at any time before actual execution of the eviction order,” all rent due and unpaid, plus late fees and court-awarded costs and fees.

Secondly, the landlord has the remedy of distress for rent, which has been codified into a highly detailed procedure. The landlord,

204. Id. § 1.401(c).
205. Id.
206. See 16 Ariz. L. Rev. 79, 89.
207. Id.
208. URLTA § 1.401(c).
209. Maryland does seek to protect tenants by requiring every landlord to “maintain a records system showing the dates and amounts of rent paid to him by his tenant and showing also the fact that a receipt of some form was given to each tenant for each cash payment of rent.” Md. Ann. Code, Real Prop. Art., § 8-208.2 (Supp. 1975). The URLTA contains no such provision. Both the URLTA, § 2.102, and the Maryland statute, Md. Ann. Code, Real Prop. Art., § 8-210 (Supp. 1975), require the landlord to disclose to the tenant, either in the lease or by posted sign, the name and address of the manager and owner of the premises. These provisions protect a tenant who is required to pay rent to the manager or owner. See text accompanying notes 146-48 supra.
211. Id. § 8-401(c)(1) (Supp. 1975).
212. Id. § 8-401(c)(3) (Supp. 1975). “The court may, upon presentation of a certificate signed by a physician certifying that surrender of the premises within the two-day period would endanger the health or life of the tenant or any other occupant of the premises, extend the time for surrender of the premises as justice may require. However, the Court may not extend the time for surrender of the premises beyond 15 days after the trial.” Id. § 8-401(c)(4) (Supp. 1975).
213. Id. § 8-401(e) (Supp. 1975). This right of redemption is not provided to any tenant “who has received more than three summons containing copies of complaints filed by the landlord against the tenant for rent due and unpaid in the 12 months prior to the initiation” of a rent due and payable suit. Id.
through judicially supervised proceedings\textsuperscript{215} may levy on the personal property of the tenant\textsuperscript{216} and sell as much as is necessary to pay the past due rent.\textsuperscript{217}

The URLTA has abolished the common law remedy of distress for rent,\textsuperscript{218} although it provides other remedies.

Section 4.201(b) provides a landlord with a remedy if the tenant fails to pay rent when due and payable. The landlord may terminate the lease\textsuperscript{219} and bring an action to recover possession and rent as well as damages for the tenant's breach of the rental agreement, plus reasonable attorney's fees.\textsuperscript{220} This action, however, is not specified to be a summary proceeding, as is the case in Maryland.\textsuperscript{221} Before a landlord may terminate the lease for non-payment of rent, he must first give the tenant written notice of non-payment of the rent and of the landlord's intention to terminate the rental agreement within 14 days after the notice if the rent is not paid.\textsuperscript{222} If the tenant fails to pay rent within 14 days after receipt of the written notice, the lease terminates and the landlord has the right to initiate an action for possession, rent and damages under Section 4.201(b), as discussed previously. If the landlord knowingly accepts a late payment of rent from a tenant, the landlord waives his right to terminate the lease on grounds of failure to pay rent when due and payable, unless landlord and tenant agree otherwise after the tenant has breached the lease.\textsuperscript{223}

Since the URLTA procedure is not a summary proceeding, it would be more favorable to tenants than the procedure delineated by the current Maryland statute. The URLTA would also favor tenants by abolishing the remedy of distress for rent. Further changes in the Maryland law would be made by URLTA's requirement that the landlord give the tenant written notice and a right to cure his breach before filing a rent due and payable suit, and by its failure to grant the tenant a right of redemption before actual execution of the eviction order.

B. Fire or Casualty Damage to the Premises

Under the common law, the tenant was held liable for rent under his lease even when the entire leased premises were destroyed by fire or

\textsuperscript{215} Self-help distress for rent is not permitted in Maryland. Id. \textsection 8-309.
\textsuperscript{216} Id. \textsection 8-309-26.
\textsuperscript{217} In a distress for rent suit in Maryland, the court may also terminate the lease and order restitution of possession, Id. \textsection 8-324, and enter a deficiency judgment if the distress sale does not bring the amount of rent due the landlord. Id. \textsection 8-325.
\textsuperscript{218} URLTA \textsection 4.205(b).
\textsuperscript{219} Id. \textsection 4.201(b).
\textsuperscript{220} Id. \textsection 4.206.
\textsuperscript{221} See text accompanying note 210 supra.
\textsuperscript{222} Id. \textsection 4.201(b).
\textsuperscript{223} Id. \textsection 4.204. A landlord, therefore, cannot prohibit a waiver by a pre-existing lease provision.
other casualty.224 Maryland has a statute225 changing the common law doctrine, but it is not as clear or thorough as the URLTA in this area. Maryland allows for the termination of the rental agreement when "improvements on property" become "untenantable" by reason of fire or "unavoidable accident" in leases of seven years or less.226

Section 4.106 of the URLTA would change the common law to afford the tenant several remedies in case of fire or other casualty damage to the leased premises. If the premises are destroyed or damaged by fire or other casualty to such an extent that the tenant's "enjoyment of the unit is substantially impaired," the tenant can immediately vacate the premises and terminate the lease as of the date of vacating by giving a written notice to the landlord, within 14 days of vacating, of his intention to terminate the rental agreement.227 The tenant may also continue to occupy the premises if he can lawfully228 do so, vacating those parts of the premises made unusable by the casualty, in which case "rent is reduced in proportion to diminution of the fair rental value of the premises."229 The URLTA, as does Maryland, provides that where the lease is terminated, rent is to be accounted for "as of the date of the fire or casualty."230 If the lease is terminated, the tenant may recover all security recoverable under Section 2.101 and all pre-paid rent.231

A major dissimilarity between Maryland's statute and Section 4.106 of the URLTA is that the premises must be "untenantable" under the Maryland statute,232 which might require the premises to be damaged to such an extent that they are totally uninhabitable, while the premises only have to be "substantially" damaged under the URLTA.233 The URLTA, however, does not further define the extent of damage necessary before a tenant may invoke the remedies provided under Section 4.106. The Maryland statute, by referring to "fire or unavoidable accident," would be inapplicable when the tenant, his family or his guests deliberately or negligently cause the fire or casualty damage. The URLTA, however, does not specify that it is inapplicable under these circumstances, although this might be implied.

The URLTA would provide the tenant a wider choice of remedies than present Maryland law when the premises suffer fire or casualty damage. The URLTA permits the tenant to continue to reside on the

224. See 1 American Law of Property § 3.103.
226. Id.
227. URLTA § 4.106(a)(1).
228. This reference to "lawful" occupancy after damage or destruction to the premises apparently refers to requirements of health, safety, fire or building codes that might prohibit occupancy.
229. URLTA § 4.106(a)(2).
230. Id. § 4.106(b).
231. Id.
233. URLTA § 4.106(a)(2).
premises, subject to requirements of housing and health codes, and to have the rent reduced when the premises are substantially damaged.

C. Tenant's Duty to Maintain the Premises

In the absence of an express covenant in the lease, the common law prohibition against waste imposes on every tenant a duty to treat the premises in such a way that they will revert to the landlord at the end of the lease term uninjured, except for ordinary wear and tear, by any willful or neglectful conduct of the tenant.\textsuperscript{234} Section 14-102 of the Maryland Real Property Article allows the landlord either to bring an action to recover damages from a tenant who commits waste or to obtain an injunction to prohibit the tenant from committing waste. Section 3.101(6) of the URLTA follows the common law by prohibiting waste by a tenant.\textsuperscript{235}

In addition to prohibiting a tenant from committing waste, the URLTA requires the tenant to keep the leased premises clean and safe,\textsuperscript{236} to properly dispose of garbage and waste,\textsuperscript{237} to keep plumbing facilities "as clean as their condition permits...,"\textsuperscript{238} and to use heating, plumbing, sanitary, ventilating, electrical and other facilities and appliances in a reasonable manner.\textsuperscript{239} The URLTA also requires tenants to comply with provisions of local building and housing codes "materially affecting health and safety."\textsuperscript{240} Maryland has no similar statute, although the Baltimore City Housing Code\textsuperscript{241} and the Montgomery County Code\textsuperscript{242} impose similar duties upon tenants with respect to maintenance of the premises.

The landlord has three options under the URLTA when the tenant breaches his duty to maintain the premises. When the breach creates a condition "materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning," the landlord may enter the premises to make the necessary repairs himself if the tenant fails to do so "as promptly as conditions require in case of emergency," or within 14 days after written notice from the landlord requesting that the tenant remedy the specified breach within that period of time.\textsuperscript{243} The repairs must be done in a workmanlike

\textsuperscript{234} Carlin v. Ritter, 68 Md. 478, 13 A. 370 (1888).
\textsuperscript{235} This Section provides that a tenant may "not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so."
\textsuperscript{236} URLTA § 3.101(2).
\textsuperscript{237} Id. § 3.101(3).
\textsuperscript{238} Id. § 3.101(4).
\textsuperscript{239} Id. § 3.101(5).
\textsuperscript{240} Id. § 3.101(1).
\textsuperscript{241} PUb. L.L. OF Md. art. 4, ch. 9 (1969).
\textsuperscript{242} Montgomery CO., Md., Code § 29-29 (1973).
\textsuperscript{243} URLTA § 4.202.
After presenting an itemized bill to the tenant, the landlord may add the reasonable cost of repairs to the next periodic rent payment. The landlord may, on the other hand, terminate the lease where the tenant’s breach of his duty to maintain the premises under Section 3.101 creates a condition “materially affecting health or safety...” The landlord must first give the tenant written notice specifying the breach and indicating that the lease will terminate at a date not less than 30 days from receipt of the notice. Unless the tenant remedies his breach within 14 days of receipt of the notice either by making repairs or by paying damages to the landlord, the lease terminates as specified. If the tenant commits substantially the same breach within six months, the landlord may terminate the rental agreement after 14 days written notice specifying the breach and the date of termination.

As the third option, the landlord may recover actual damages and obtain injunctive relief where the tenant breaches his duty to maintain the premises under Section 3.101. If the tenant’s breach is willful, the landlord may also recover reasonable attorney’s fees. The landlord presumably could combine the second and third options to recover damages as well as terminate the lease.

The URLTA would make a significant contribution to Maryland law by specifying the tenant’s duty to maintain the premises, and by providing the landlord with remedies which are dependent upon the seriousness of the tenant’s breach.

D. Tenant’s Duty Not to Disturb

Under the common law, the tenant’s breach of a lease covenant prohibiting disturbance of other tenants’ enjoyment of their premises was grounds for eviction by the landlord. However, in Maryland, the tenants whose enjoyment was disturbed might not be able to enjoin the breaching tenant as third party contract beneficiaries. In addition,
tenant cannot terminate his lease because of the conduct of another tenant disturbing his enjoyment of the premises; such conduct by other tenants does not amount to constructive eviction unless the conduct is supported or instigated by the landlord.\textsuperscript{254} A tenant in a multi-unit rental building, however, can enjoin another tenant from disturbing his enjoyment if the other tenant’s conduct amounts to a private nuisance.\textsuperscript{255} Maryland does not have any statutory provision for a tenant’s disturbance of other tenants.

Section 3.101(7) of the URLTA, however, prohibits a tenant and other persons on the premises with his consent from disturbing other tenants’ peaceful enjoyment of their premises.\textsuperscript{256} Violation of this provision might give disturbed neighboring tenants a cause of action under Section 1.105 of the URLTA.\textsuperscript{257}

The landlord’s notice requirements for a tenant’s breach of Section 3.101(7) “materially affecting health and safety,” are found in Section 4.201.\textsuperscript{258} Even though the tenant’s breach of Section 3.101(7) does not materially affect health and safety, the landlord may recover actual damages and obtain injunctive relief.\textsuperscript{259} The landlord presumably could recover damages in addition to terminating the lease. By these provisions the URLTA makes all tenants subject to a uniform duty not to disturb other tenants and gives all landlords and tenants uniform remedies against tenants who cause disturbances. This is preferable to common law under which tenants who cause disturbances were subject to eviction by a landlord only under a properly drafted lease provision and to injunction or damages by neighboring tenants under the law of nuisance.

\textsuperscript{254} Stewart v. Lawson, 199 Mich. 497, 165 N.W. 716 (1917). \textit{But see} Phyfe v. Dale, 72 Misc. 383, 130 N.Y.S. 231 (1911), which indicates that a landlord’s failure to control the other tenants’ conduct which creates a nuisance in common areas constitutes constructive eviction and allows the tenant whose enjoyment is disturbed to vacate the premises and terminate the lease.

\textsuperscript{255} For a general discussion of the standards for determination of a nuisance, see 1 F. Harper & F. James, \textit{The Law of Torts} §§ 1.23-25 (1956).

\textsuperscript{256} Section 3.101(7) can be criticized because “other persons on the premises with [the tenant’s] consent” could include the landlord or the landlord’s employees. The wording should be changed to exclude these persons.

\textsuperscript{257} The Official Comment to Section 1.105 provides that “in appropriate circumstances rights and remedies may extend to third persons under this Act or supplementary principles of law. . . .” Section 1.105 provides:

\begin{enumerate}
\item The remedies provided by this Act shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.
\item Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.
\end{enumerate}

\textsuperscript{258} \textit{See} text accompanying notes 246-49 \textit{supra}.

\textsuperscript{259} URLTA § 4.201(c). Where the tenant’s breach of Section 3.101(7) is willful, the landlord may recover reasonable attorney’s fees in addition to actual damages. \textit{Id.}
E. Tenant's Duty to Provide the Landlord with Reasonable Access to the Premises

Under common law the tenant's possessory interest in the premises was absolute even against the landlord and in the absence of a reservation in the lease the landlord had no right to enter to make repairs or to inspect the premises.\textsuperscript{260}

Section 3.103 of the URLTA changes the common law by imposing upon a tenant the duty to consent to reasonable access to the premises by the landlord for the purposes of inspecting the premises, making repairs or alterations, supplying services, or showing the premises to prospective tenants or purchasers or to workmen or contractors. The URLTA would permit the landlord to enter the premises without the tenant's consent in an "emergency" situation, although such emergencies are not defined.\textsuperscript{261} The landlord, however, may not abuse the right of access or use it to harass the tenant,\textsuperscript{262} and it would appear that the tenant could "reasonably" withhold his consent if the landlord or his employees sought to enter the premises after normal working hours.\textsuperscript{263} Although Section 3.103 requires the landlord to give the tenant two days' advance notice before entering the premises except in emergencies or where impracticable, the URLTA should be amended to require the landlord or his employees to knock and announce their presence before entering the premises even in an emergency in order to protect the tenant's right of privacy.\textsuperscript{264}

When the landlord has made an unlawful entry, a lawful entry in an unreasonable manner, or repeated demands for entry otherwise lawful but which unreasonably harass the tenant, the URLTA provides the tenant with alternative remedies of injunctive relief or termination of the lease, in addition to damages and reasonable attorney's fees.\textsuperscript{265} A tenant's refusal to consent to lawful access by the landlord allows the landlord to obtain injunctive relief or termination of the lease in addition to damages and reasonable attorney's fees.\textsuperscript{266}

Under the URLTA, the landlord may also enter the premises when authorized by court order,\textsuperscript{267} when necessary to make repairs when the tenant has failed to maintain the premises as required by Section 3.101, in an emergency, or after 14 days notice from the landlord,\textsuperscript{268} when reasonably necessary if the tenant is absent from the premises for a

\textsuperscript{261} URLTA § 3.103(b).
\textsuperscript{262} Id. § 3.103(c).
\textsuperscript{263} The tenant's consent, however, would not be required in an "emergency" situation. Id. § 3.103(b).
\textsuperscript{265} URLTA § 4.302(a).
\textsuperscript{266} Id.
\textsuperscript{267} Id. § 3.103(d)(1).
\textsuperscript{268} Id. § 4.202; see Id. § 3.103(d)(2).
period exceeding 7 days, or when the tenant has abandoned or surrendered the premises.

Maryland has no similar statute. Landlords in Maryland, however, often reserve a right of access in the lease; adoption of the URLTA in Maryland would protect tenants against unreasonable access by landlords under such lease provisions.

F. Tenant's Absence from or Abandonment of the Premises

Common law gave the landlord three options when the tenant abandoned the premises. First, the landlord could consider the rental agreement as still in effect and sue the tenant for unpaid rent as each periodic rent payment became due and was not paid. As a second option under the common law, the landlord could consider the rental agreement as remaining in effect after notifying the tenant that he was not accepting surrender or that he was reletting the premises for the benefit of the tenant. If the landlord exercised this second option, he had to make reasonable efforts to relet the premises at a fair rent. If the landlord could not relet the premises for the amount of rent owed by the tenant, the landlord could sue the tenant for damages measured by the difference between the rent due and payable by the tenant and the rent received by the landlord for reletting the premises for the remainder of the term. The third option under the common law permitted the landlord to accept the tenant's abandonment as a surrender of the lease, thus terminating the lease and prohibiting the landlord from recovering either future rent or damages from the tenant.

Maryland has abolished the landlord's first option under the common law where the tenant abandons the premises and now requires a

269. Id. § 4.203(b); see Id. § 3.103(d)(2).
270. Id. § 3.103(d)(3).
271. Abandonment occurs when the tenant surrenders possession of the premises to the landlord and terminates payment of rent when due and payable. See 16 Ariz. L. Rev. 79, 127; 1 American Law of Property § 3.99. Abandonment does not occur merely because the tenant vacates; the tenant must be shown to have intended to relinquish all rights in the premises. See 16 Ariz. L. Rev. 79, 129.
275. See 1 American Law of Property § 3.99. For a discussion of mitigation of damages, see text accompanying notes 403-09 infra.
276. Instead of requiring the landlord to sue the tenant for rent as it becomes due and payable after the tenant abandons the premises, some states allow the landlord to treat the abandonment and failure to pay rent as a repudiation of the lease and to sue the tenant for total damages, as in the case of anticipatory breach of contract. Novak v. Fontaine Furniture Co., 84 N.H. 93, 146 A. 525 (1929); Grayson v. Mixon, 176 Ark. 1123, 5 S.W.2d 312 (1928). Contra, Hermitage Co. v. Levine, 248 N.Y. 333, 162 N.E. 97 (1928). See 1 American Law of Property § 3.99.
landlord who is aggrieved by a tenant's "termination of occupancy before the end of the term" to mitigate damages. The courts are likely to interpret this statute as referring to common law abandonment because it encompasses the essence of that doctrine. Under the Maryland statute, the landlord's duty to mitigate damages does not include an obligation "to show or lease the vacated dwelling unit in preference to other available units," since such action by the landlord may be at the request of the prospective tenant of the premises, and a contrary rule would allow the breaching tenant to dictate to the landlord and prospective tenants the choice of which unit to rent. Maryland also modifies the second common law option where the tenant abandons the premises by allowing the landlord to "sublet the dwelling unit without prior notice to the tenant in default" where a tenant "wrongly fails or refuses to take possession of or vacates the dwelling unit before the end of his term..." When the landlord exercises his option to sublet the premises in Maryland, "[t]he tenant in default is secondarily liable for rent for the term of his original agreement in addition to his liability for consequential damages resulting from his breach, if the landlord gives him prompt notice of any default by the sublessee.

This latter requirement seems to be an exception to the landlord's duty to mitigate damages when he exercises his option to sublet the premises. The duty to mitigate damages presumably would require a landlord to make reasonable efforts to relet the premises following default by a "sublessee" after the landlord initially mitigated damages by reletting the premises following default by the tenant. Under this Maryland statute, however, after a sublessee defaults, a landlord would not have to further mitigate damages if he promptly notifies the defaulting tenant of the sublessee's default. In Maryland, the defaulting tenant's only protection in this situation is to attempt to relet the premises himself.

The URLTA, like Maryland, abolishes the first option under the common law when the tenant has abandoned the premises by requiring the landlord to make "reasonable efforts" to relet the premises "at a fair rental value." "If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as

278. Md. Ann. Code, Real Prop. Art., § 8-207(a)(3) (1974). A landlord's duty to mitigate damages under this section cannot be waived. Id. § 8-207(d). In Baltimore City and in Anne Arundel County, a landlord may not recover damages from a tenant who "fails to take possession of or vacates the dwelling unit before the end of his term," in an amount exceeding the "loss of rent caused by the termination of two months rent, whichever is less, in addition to the cost of repairing damages to the premises which may have been caused by an act or omission of the tenant." Id. § 8-212(a) (Supp. 1975).

279. See note 271 supra.


281. Id. § 8-207(c).

282. Id.

283. URLTA § 4.203(c); see also URLTA § 1.105(a), which generally requires an aggrieved party to mitigate damages.
of the date of the new tenancy.\textsuperscript{284} The term of a month-to-month or week-to-week tenancy for this purpose is "deemed to be a month or a week as the case may be."\textsuperscript{285} The rental agreement is deemed terminated by the landlord as of the date he receives notice of the abandonment, if he either fails to use reasonable efforts to relet the premises or accepts the abandonment as a surrender.\textsuperscript{286}

The URLTA provides that rent is "uniformly apportionable from day to day."\textsuperscript{287} Thus this rule makes the tenant liable for proportional rent only for the period until the lease is terminated (regardless of the term of the tenancy under the rental agreement).\textsuperscript{288}

When the lease has terminated under Section 4.203(c) because the premises were relet by the landlord, the landlord under Section 4.206\textsuperscript{289} can recover possession, apportionable rent, and a separate claim for actual damages, as well as reasonable attorney’s fees if the tenant’s abandonment is willful. Section 4.206 of the URLTA also implies that a landlord may recover actual damages when the lease has terminated under Section 4.203, when the landlord has failed to use reasonable efforts to rent the premises at a fair rental value, or when the landlord has accepted the abandonment as a surrender. Under common law, however, the landlord who accepted abandonment as a surrender, or who, in exercising his second option, failed to make reasonable efforts to relet at a fair rental value, was not entitled to damages.\textsuperscript{290} In addition, to award the landlord damages after the landlord has failed to reasonably mitigate damages when the tenant has abandoned the premises would be contrary to the general duty of an aggrieved party under Section 1.105(a) to mitigate damages. If Section 4.206 of the URLTA is interpreted as not modifying these common law principles, it would not authorize damages to the landlord when the landlord did not reasonably mitigate damages or when he accepted the abandonment as a surrender. Under this interpretation of Section 4.206, when the tenant has abandoned the premises, the landlord can recover apportionable rent up to the date of termination and, after the

\textsuperscript{284} Id. § 4.203(c).
\textsuperscript{285} Id.
\textsuperscript{286} Id.
\textsuperscript{287} Id. § 1.401(c).
\textsuperscript{288} This provision of the URLTA changes the common law rule that rent was not apportionable. Diepenbrock v. Luiz, 159 Cal. 716, 115 P. 743 (1911). Under the common law, when rent was not due until the end of the rental period, the landlord could not recover rent in the event of early termination of the rental agreement by the landlord. Willis v. Kronendonk, 58 Utah 592, 200 P. 1025 (1921). On the other hand, if rent was payable at the beginning of the rental period, the tenant could not recover any of the prepaid rent if the lease was terminated early. Wells v. Blystad, 91 Colo. 346, 14 P.2d 1078 (1932). See 16 ARIZ. L. REV. 79, 90.
\textsuperscript{289} This section provides that
[i]f the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney’s fees as provided in Section 4.201(c).
\textsuperscript{290} See note 275 supra.
lease has terminated, actual damages (if the landlord's conduct resulting in termination of the lease is not held to bar his recovery of damages). Actual damages presumably would be measured by the difference between the amount of rent due under the rental agreement and the rent, if any, that the landlord obtained after making "reasonable efforts to rent . . . at a fair rental," for the remainder of the tenant's term.

Because of this uncertainty in the interpretation of the URLTA, the present Maryland statute is preferable. The Maryland statute, however, should be amended to follow the URLTA with respect to a landlord's general duty to mitigate damages when the tenant has abandoned and with respect to apportionment of rent when the lease is terminated after abandonment.

In addition to governing situations where the tenant abandons the premises prior to the termination of the tenancy, the URLTA also governs prolonged absences from the premises by the tenant. This situation was not governed by the common law or by Maryland statute. The URLTA provides that a tenant may be required by the rental agreement to notify the landlord if he anticipates that he will be absent from the premises for more than 7 days.291 This notice must be given no later than the first day of the extended absence.292 If the tenant "willfully" fails to give such notice when required to do so by the rental agreement, the landlord may recover actual damages from the tenant.293 When the tenant is absent from the premises for more than 7 days, the landlord may enter the premises "at times reasonably necessary," presumably to protect the tenant's property or to protect against damage by vandals. This amendment of the common law is desirable, because it protects the tenant's personal property and protects the landlord's investment in the premises from being damaged by vandalism during the tenant's prolonged absence.

G. Tenant's Duty to Obey the Rental Agreement and Rules and Regulations

A landlord and tenant, under the common law, were able to include in the rental agreement any rules or regulations that they considered acceptable.295 Rules and regulations adopted by the landlord after the rental agreement was executed could be enforced against a tenant if they were reasonable.296

There are no statutes in Maryland governing rules and regulations promulgated by landlords. Many leases in Maryland include a provision whereby the tenant agrees to obey rules and regulations issued by the

291. URLTA § 3.104.
292. Id.
293. Id. § 4.203(a). The landlord may be damaged in such situations if the premises are vandalized in the tenant's absence.
294. Id. § 4.203(b).
295. 16 Ariz. L. Rev. 79, 124.
296. Id.
landlord subsequent to the signing of the lease; violation of such rules then becomes a violation of the lease and therefore possible grounds for eviction.297

Section 3.102 of the URLTA restricts the rules and regulations that the landlord can enforce against his tenants. Section 3.102 limits the enforcement against a tenant of rules and regulations applicable at the time of execution of the lease as well as rules and regulations adopted after the execution. A rule or regulation adopted after the tenant enters into the rental agreement that “works a substantial modification of his bargain . . . is not valid unless the tenant agrees to it in writing.”298 Rules and regulations, whether adopted before or after the tenant’s execution of the lease, are not enforceable against the tenant unless he has notice of the rule or regulation at the time of adoption,299 and they are reasonably related to the purpose of promoting the tenant’s convenience, safety or welfare, preventing abuse of the premises, or fairly distributing services and facilities among the tenants.300 In addition, rules and regulations, in order to be enforceable, must be fairly applied to all tenants, and must be sufficiently explicit as to the duties imposed.301 The limitations imposed by URLTA upon rules and regulations that may be enforced by a landlord would be a desirable protection for tenants in Maryland.

Both the URLTA302 and the Maryland statute303 prohibit leases from containing certain oppressive provisions. The Maryland statute, as does the URLTA, prohibits and makes unenforceable lease provisions which authorize confession of judgments304 or waiver of the tenant’s

297. See text accompanying note 340 infra.
298. URLTA § 3.102(b).
299. Id. § 3.102(a)(6).
300. Id. § 3.102(a)(1).
301. Id. §§ 3.102(a)(3), (4). Enactment of a statute similar to the New Jersey good cause eviction statute, N.J. STAT. ANN. 2A § 18:53 (Supp. 1975), would supplement Section 3.102 of the URLTA, since it would limit the grounds for eviction during the term of the lease, as well as the grounds for non-renewal of a lease by a landlord, thus drastically altering the estates in land concept of the landlord’s reversion at the end of the term of the lease. See Note, New Rights for New Jersey Tenants—“Good Cause” Eviction and “Reasonable” Rents, 6 RUTGERS-CAMDEN L.J. 565 (1975).
302. URLTA § 1.403.
303. Md. ANN. CODE, Real Property Art., § 8-208 (Supp. 1975). Id. § 8-203.1 (Supp. 1975), provides that no landlord “who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases” may include a provision in a lease authorizing the landlord to take possession of the premises or the tenant’s personal property except pursuant to law, Id. § 8-203.1(b)(1); or a provision authorizing the landlord to attempt to evict the tenant solely because he is planning, organizing or joining a tenants’ organization to collectively negotiate with the landlord. Id. § 8-203.1(b)(2). This section should be repealed because it duplicates Section 8-208 of the Maryland Annotated Code, Real Property Article, but is narrower in scope because it applies only to certain residential landlords. Id. § 8-501 (Supp. 1975), prohibits a written agreement between a landlord and tenant from providing “for a longer notice period to be furnished by the tenant to the landlord in order to terminate the tenancy than that required of the landlord to the tenant in order to terminate the tenancy.”
rights or remedies under law.\textsuperscript{305} Under the URLTA, a lease provision may not exculpate or limit the liability of the landlord arising under law;\textsuperscript{306} provide that the tenant agree to confession of judgment on a claim arising under the rental agreement;\textsuperscript{307} or provide that the tenant agree to waive or forgo rights or remedies arising under the URLTA.\textsuperscript{308} The Maryland statute, unlike the URLTA, forbids provisions which provide for excessive penalties for late payment of rent;\textsuperscript{309} or which provide for a shorter period of notice to quit by the landlord than is authorized by law.\textsuperscript{310} It also forbids provisions which authorize the landlord to take possession of the premises or the tenant's personal property except when the lease has been terminated by action of the parties or by operation of law and the tenant has abandoned such personal property without "the benefit of formal legal process."\textsuperscript{311} The URLTA, unlike Maryland, prohibits lease provisions whereby a tenant agrees to pay the landlord's attorney's fees;\textsuperscript{312} or agrees to indemnify the landlord for his liability arising under law, or for connected costs.\textsuperscript{313} Under the URLTA, rules and regulations would also be subject to the prohibition against unconscionable provisions in rental agreements.\textsuperscript{314} Rules and regulations would probably be held to

\textsuperscript{305} Id. § 8-208(a)(2) (Supp. 1975). There is also a specific prohibition against a lease provision whereby the tenant agrees to waive his right to a jury trial. Id. § 8-208(a)(4) (Supp. 1975). This prohibition, however, would probably be inferred from the prohibition against a provision whereby the tenant agrees to waive any right provided by applicable law.

\textsuperscript{306} URLTA § 1.403(a)(4).

\textsuperscript{307} Id. § 1.403(a)(2).

\textsuperscript{308} Id. § 1.403(a)(1).

\textsuperscript{309} Md. ANN. CODE, Real Prop. Art., § 8-208(a)(3) (Supp. 1975).

\textsuperscript{310} Id. § 8-208(a)(5).

\textsuperscript{311} Id. § 8-208(a)(6). The Maryland statute also makes automatic lease renewal provisions (subject to termination if the tenant gives prior notice) unenforceable unless such provision is distinctly set forth in the lease and is separately acknowledged by the tenant. Id. § 8-208(b)(1).

\textsuperscript{312} URLTA § 1.403(a)(3). This provision of the URLTA has been criticized because there are instances under the URLTA in which the tenant may be required to pay the landlord's attorney's fees if there is a willful noncompliance with the rental agreement by the tenant, Id. § 4.201(c), or if the tenant refuses to allow lawful access to the premises by the landlord. Id. § 4.302(a). Section 1.403 of the URLTA, if read literally, would impose a penalty on a landlord who includes a provision in the lease providing that the tenant agrees to pay the landlord's attorney's fees under circumstances authorized by these sections of the URLTA. This inconsistency should be eliminated by amendment of Section 1.403. See Subcommittee on Leases, Uniform Residential Landlord and Tenant Act: Some Suggestions for Improvement, 9 REAL PROP., PROB. & TRUST J. 402, 403 (1974).

\textsuperscript{313} URLTA § 1.403(a)(4).

\textsuperscript{314} Id. § 1.303. This section has been criticized on the grounds that the term "unconscionable" is too amorphous to be workable. In the Comment to Section 1.303 of the URLTA, the drafters of the Act attempt to answer this criticism and lay down guidelines for interpretation of the term. "The basic test is whether, in light of the background and setting of the market, the conditions of the particular parties to the rental agreement, settlement or waiver of right to claim are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the agreement or settlement. Thus, the particular facts involved in each case are of utmost importance since unconscion-
be unconscionable, and therefore unenforceable, if they were oppressive or were not reasonably related to the tenant’s “use and occupancy of the premises.” This prohibition against unconscionable provisions, however, does not authorize the tenant to recover damages against the landlord.

Under both the Maryland statute and the URLTA, any prohibited lease provision is unenforceable by the landlord. In Maryland, if a landlord tenders a lease containing one of these prohibited lease provisions, or a provision made unenforceable by two other Maryland statutes, or attempts or threatens to enforce such provisions, the tenant may recover actual damages and reasonable attorney’s fees. If the landlord “deliberately” uses a lease containing provisions “known by him to be prohibited,” the URLTA authorizes the tenant to recover his actual damages as well as punitive damages of up to three months’ rent and reasonable attorney’s fees. There is no provision under the Maryland statute, as there is under the URLTA, for an award of punitive damages. Authorization of punitive damages may be desirable in order to deter landlords from placing prohibited provisions in leases.

From the viewpoint of the tenant, the URLTA’s prohibited lease provision section, if amended to prohibit the same provisions now prohibited by the Maryland statute, would be preferable because it includes a prohibition against “unconscionable” provisions, and also authorizes punitive damages to be awarded.

Under the common law, which is followed in Maryland, courts will not terminate a lease because of a tenant’s breach of a provision, rule or regulation of a lease, unless the tenant’s breach is willful and substantial (i.e., material) and the tenant fails to cure his breach within a reasonable period of time after receiving notice of his breach from the landlord. In addition to or instead of terminating the lease, the landlord under the common law may also recover damages from the tenant who has breached a covenant in the lease; the amount of damages is determined pursuant to principles of contract law.

The URLTA essentially follows the common law regarding the landlord’s termination of a lease where the tenant has breached a provision, rule or regulation of the rental agreement. Section 4.201 of...
the URLTA authorizes the landlord to terminate a rental agreement when the tenant has materially breached a provision of the rental agreement or a valid rule or regulation. Prior to termination of the lease, the landlord must first give the tenant written notice specifying the breach and stating that the rental agreement will terminate at a date not less than 30 days after receipt of the notice.\textsuperscript{322} If the tenant does not cure his breach within 14 days of receipt of the notice, the lease terminates as specified by the notice.\textsuperscript{323} The URLTA should be amended to require the notice to specify the tenant's right to cure his breach. If the tenant breaches a provision, rule or regulation of the rental agreement in substantially the same manner within 6 months, the landlord may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement.\textsuperscript{324}

In addition to terminating the lease, the landlord may recover actual damages.\textsuperscript{325} If the landlord cannot terminate the lease because the tenant's breach of a provision, rule or regulation of the lease is non-material, the landlord may still recover actual damages and obtain injunctive relief.\textsuperscript{326}

Under the URLTA, the landlord waives his right to terminate a lease for a breach if he accepts performance "that varies from the terms of the rental agreement . . .," unless the parties agree otherwise after the tenant's breach has occurred.\textsuperscript{327} The Official Comment to Section 4.204 states that if a breach of a continuing duty is involved, acceptance of performance will not bar the landlord's remedy for a later breach. Section 4.204 does not state if the landlord also waives his right to recover damages by waiving his right to terminate the lease. A specific provision with respect to this problem would be desirable.

The URLTA thus gives the landlord a choice of remedies similar to those under the common law when the tenant has breached a provision of a lease or a rule or regulation.

\textbf{H. Holdover Tenants}

When the tenant remains in possession after the lease or tenancy has terminated or expired,\textsuperscript{328} he is considered by the common law to be a

\textsuperscript{322} URLTA \textsection{4.201(a).

\textsuperscript{323} Id.

\textsuperscript{324} Id.

\textsuperscript{325} Id. \textsection{4.201(c).

\textsuperscript{326} Id. Where the tenant's breach of a provision, rule or regulation of the rental agreement is willful, a landlord may recover reasonable attorney's fees in addition to actual damages. \textit{Id.}

\textsuperscript{327} Id. \textsection{4.204.

\textsuperscript{328} Whether a tenant remains "in possession" after termination of the tenancy is a question of fact. \textit{1 American Law of Property} \textsection{3.34. Courts have held that leaving a few articles of worthless property on the premises, or retaining the keys to the premises, does not constitute remaining in possession in this context. \textit{Id.} Possession of the premises for a fraction of the day after termination or expiration of the lease or tenancy has been held not to constitute holding over beyond termination. \textit{Id.}
tenant at sufferance or a holdover tenant.\textsuperscript{329} Under the common law, the landlord may elect either to bring an action to eject the tenant and recover damages or consent to continued possession by the holdover tenant.\textsuperscript{330} This election of remedies is available to the landlord even though he previously terminated the tenancy.\textsuperscript{331} The tenant, after holding over, is subject to the remedy elected by the landlord even though he stated that he does not intend to become a tenant pursuant to this doctrine.\textsuperscript{332} The courts conflict over whether the landlord must make a prompt election of remedies; some courts interpret the failure of a landlord to elect his remedy within a reasonable period of time as his consent to the holdover tenant to remain in possession as a

\textsuperscript{329} 1 American Law of Property § 3.32. In fact, a tenant at sufferance or a holding over tenant is not a tenant, since he is not in possession pursuant to an oral or written lease or otherwise with the consent of the landlord. The only difference between a tenant at sufferance and a trespasser is that the holdover tenant, although wrongfully in possession, entered the premises lawfully. \textit{Id.}


In addition, under the English rule, which has been followed in Maryland, the landlord can recover possession by self-help use of reasonable and necessary force, without resort to legal process or remedies, to expel the tenant who wrongfully remains in possession after termination of the lease or tenancy. Manning v. Brown, 47 Md. 506 (1878); see Annot., 6 A.L.R.3d 177 (1966). Under this rule, the landlord who uses force which is not reasonable and necessary may be liable to the tenant for damages. See Annot., 6 A.L.R.3d 177 (1966). This rule may have been affected, however, by Md. Ann. Code, Real Prop. Art., § 8-208(a)(6) (Supp. 1975), which prohibits a residential lease from containing a provision authorizing the landlord to take possession of the leased premises, or the tenant’s personal property therein unless the lease has been terminated by action of the parties or by operation of law, and such personal property has been abandoned by the tenant without the benefit of formal legal process.

This section might be interpreted as prohibiting a lease provision authorizing the landlord to use self-help to expel a wrongfully holding over tenant; however, it does not prohibit the landlord from regaining possession by self-help in the absence of such a lease provision. The modern rule, followed by an increasing number of courts, is that the landlord must resort to legal process and remedies to recover possession when the lease or tenancy has terminated. See Jordan v. Talbot, 55 Cal. 2d 597, 12 Cal. Rptr. 488, 361 P.2d 20 (1961); Annot., 6 A.L.R.3d 177 (1966). Under this modern rule, the wrongfully holding over tenant may recover damages and restitution of possession of the premises where the landlord has used self-help force or deception to regain possession, even though the tenant has wrongfully held over after termination of the tenancy and has no right to possession. See Annot., 6 A.L.R.3d 177 at 199. The position of the URLTA with respect of self-help repossession by the landlord is unclear. Section 4.207 of the URLTA provides that “a landlord may not recover or take possession of the dwelling unit by action or otherwise... except in case of abandonment, surrender, or as permitted in this Act.” This reference to taking possession “otherwise” than by action might be interpreted as indicating approval of self-help repossession. On the other hand, the limitation upon recovery of possession “except in case of abandonment, surrender, or as permitted in this Act” could be construed as only permitting recovery of possession by legal action pursuant to specific provisions of the URLTA, except in cases of abandonment or surrender (in which cases self-help repossession would be permitted under the URLTA).


\textsuperscript{332} \textit{Id.}
tenant. The landlord’s consent can occur by formal language or by acts inferred from his conduct, such as his acceptance of rent from the holdover tenant. The landlord’s election of a remedy is irrevocable.

If the landlord elects to accept the holdover tenant as a tenant, the new tenancy is subject to the general terms and conditions of the prior tenancy.

Maryland, following the majority rule, holds that the tenancy created by the lessor’s election to consent to possession by the holdover tenant is a periodic tenancy. The Maryland Court of Appeals states that the period of such tenancy is determined by the period for which rent is reserved under the lease, while some other courts hold that the period of the tenancy is determined by the term of the original lease.

The URLTA would change Maryland law by providing that when the landlord consents to continued occupancy by the holdover tenant, the tenancy is a month-to-month tenancy.

Under the common law, the landlord may sue to recover possession and damages from the holdover tenant, including the fair rental value of the premises during the holding over and any special damages which are reasonably foreseeable as a result of holding over. The tenant’s holding over may cause the landlord to breach his covenant to deliver possession to a new tenant, making him liable to the new tenant for damages caused by the landlord’s breach of his covenant. Special

334. See Note, 19 Md. L. Rev. 151, 153 (1959); 1 American Law of Property § 3.33.
336. 1 American Law of Property § 3.35; see Darling Shops Delaware Corp. v. Baltimore Center Corp., 191 Md. 289, 60 A.2d 669 (1948). There is a split of authority as to whether the landlord over the protest of the tenant, may change the terms and conditions of tenancy created after a holdover. See Annot., 109 A.L.R. 197 (1937).
338. A. H. Fetting Mfg. Jewelry Co. v. Waltz, 160 Md. 50, 152 A. 434 (1930). Thus, if the lease reserves an annual rental, the new tenancy after the holdover is a year-to-year tenancy, even though the annual rent is payable in monthly installments and even though the term of the lease was for a fixed period greater than one year. Id. Courts that follow the majority rule require the landlord or tenant to give notice to terminate such tenancy.
339. See 1 American Law of Property § 3.35. Courts that follow this rule make the tenancy a year-to-year tenancy when the term under the lease was for more than a year. Annot., 108 A.L.R. 1464 (1937). A minority of courts hold that the new tenancy created after the holdover tenancy is a tenancy for a definite term which ends without notice. 1 American Law of Property § 3.35.
340. URLTA § 4.301(c).
341. See 1 American Law of Property § 3.36. A tenant who is entitled to possession has an action under Maryland statute and common law and under the URLTA against a landlord who fails to deliver possession because of a holdover tenant. See section on Landlord’s Duty to Deliver Possession at text accompanying notes 127-38 supra.
342. See text accompanying notes 127-29 supra.
damages might include the cost to the landlord of providing substitute housing for the new tenant who is unable to take possession because of the holdover tenant, storage of furniture and other goods, and the cost of moving stored items to the premises when the landlord can deliver possession of the premises. Both Maryland and the URLTA authorize the landlord to bring an ejectment action against the wrongfully holding over tenant even though the landlord has entered into a lease with a new tenant.

Maryland provides the landlord with a summary proceeding to recover possession of the premises from a holdover tenant. In order to recover possession in this summary proceeding, the landlord must first give the tenant written notice to quit prior to the expiration of the term or termination of the period. If the tenant fails to remove from the premises after receiving timely notice, the landlord may recover possession in a summary proceeding. The landlord in Maryland is also entitled to recover actual damages in this summary proceeding, but he may not recover damages exceeding "double the rent under the lease, apportioned for the duration of the holdover." In order to recover damages in the summary ejectment action for possession, the landlord must first give the tenant written notice stating the tenant's potential liability for damages. "Damages in excess of the rental rate specified in the lease . . . accrue only from the end of the term or thirty (30) days after the delivery" of notice to the tenant informing him of his potential liability for damages, whichever is later. When damages in excess of the rental rate specified in the lease have not accrued, the landlord is entitled to damages in an amount not less than the "apportioned rent for the period of the holdover at the rent rate under the lease." The provisions regarding recovery of damages in a summary ejectment proceeding by the landlord are not "intended to limit any other remedies which a landlord may have against a holdover tenant under the lease or under applicable law." The Maryland summary ejectment statute consequently does not preclude a separate

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344. URLTA § 2.103, Comment.
346. Id. The amount of time by which the notice must precede the expiration of the term or the period depends upon whether the tenant is a tenant under a lease for a definite term, a periodic tenant, or a tenant at will; the length of required notice is discussed in the section on Termination of Periodic Tenancy at text accompanying notes 384-402 infra.
349. Id. § 8-402(a)(3) (1974). This notice may be given at any time before or after termination of the lease, but not more than 100 days before termination of the lease. Id. This notice may not be waived by lease provisions or otherwise. Id.
351. Id.
352. Id. § 8-402(a)(4).

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common law action by the landlord to recover all actual damages from the holdover tenant. Under the Maryland summary ejectment statute, notice to the tenant of his potential liability for damages in a summary ejectment proceeding is not to “be construed as an election of remedies by the landlord if the notice is given prior to the end of the lease term.” The inference is that the landlord may be precluded from bringing a separate action for damages if he delays giving the notice of potential liability until after the end of the lease term; in such a case he may be entitled to recover damages only in the summary ejectment action.

The URLTA differs in a number of respects from Maryland’s summary ejectment statute. Although the URLTA provides the landlord with an action to recover possession and damages from the holdover tenant, this action is not specified to be a summary proceeding, as it is in Maryland; it appears to be nothing more than a common law ejectment action for possession and damages.

The URLTA, unlike the Maryland summary ejectment statute, does not require that the landlord give notice to quit to the tenant before he can bring an action for possession and damages. The URLTA allows the landlord to recover damages from the holdover tenant only when “the tenant’s holdover is willful and not in good faith,” while the Maryland summary ejectment statute authorizes recovery of damages from the tenant who “unlawfully” holds over. Despite this difference in language with respect to which holdover tenants are liable for damages, both probably would be interpreted to be consistent with the common law so as to exempt the holdover tenant from liability for damages when the holding over is due to circumstances beyond the control of the tenant, such as illness of the tenant or a member of his family, or a strike that prevents the tenant from moving his belongings.

On the other hand, the URLTA, unlike the Maryland summary ejectment statute, does not limit the amount of damages that the landlord may recover from the holdover tenant to an amount less than actual damages. The URLTA, unlike Maryland, contains no

353. Id.
354. URLTA § 4.301(c).
355. The Comment to URLTA § 2.103 states that the landlord’s or tenant’s action against the holdover tenant may be in a summary proceeding when “appropriate;” the URLTA apparently envisions that enacting states will specify whether an action under Section 4.301 is to be a summary proceeding.
356. URLTA § 4.301(c).
359. Feiges v. Racine Dry Goods Co., 231 Wis. 270, 285 N.W. 799 (1939). If the tenant remains in possession after termination of the lease as a result of negotiations for a new lease with the landlord, a tenancy at will, not a periodic tenancy, is created. Donnelly Advertising Corp. v. Flaccomio, 216 Md. 113, 140 A.2d 165 (1958). See 1 American Law of Property § 3.34.
360. Where the tenant’s holdover is willful and not in good faith, the URLTA authorizes the landlord to recover actual damages, but not to exceed “more than 3 month’s periodic
provisions regarding accrual of damages in excess of the specified rental rate or regarding the minimum amount of damages. The URLTA, unlike the Maryland summary ejectment statute, does not specifically authorize recovery of damages from the holdover tenant in an action separate from the action for possession.

The URLTA is more fair to landlords than the Maryland summary ejectment statute, because it allows the landlord to recover all actual damages, as well as punitive damages and reasonable attorney's fees.361 The URLTA, however, does not provide a summary proceeding as does the Maryland summary ejectment statute.

VI. RETALIATORY CONDUCT

Under the common law, the landlord may evict or eject the tenant during the term of the lease only when the tenant has breached a material covenant or clause of the lease,362 a condition in the lease,363 or a right of re-entry or power of termination in the lease.364 The landlord, under the common law concept of estates in land, however, has a reversion at the end of the leasehold estate.365 The landlord, under the common law, can fail to renew a written lease, or terminate a periodic tenancy, for any reason at all or for no reason.366 The tenant who holds over after the termination of the lease or tenancy can be ejected by the landlord.367

With the recent growth of activities by tenants to enforce and expand their rights against landlords, tenants have become concerned that landlords might retaliate against them for joining or organizing a tenants' organization, or for filing complaints with the landlord or with public officials, by evicting or ejecting them during the term of the lease, by not renewing a written lease after the term has expired, by terminating a periodic tenancy, by increasing rent, or by decreasing rent or threefold the actual damages, whichever is greater, and reasonable attorney's fees.368 URLTA § 4.301(c). The URLTA thus implicitly authorizes a court to award both actual damages and punitive damages against a holdover tenant. Maryland, although authorizing the landlord to recover costs as part of a judgment against the holdover tenant, Md. Ann. Code, Real Prop. Art., § 8-402(b)(2) (1974), does not authorize the landlord to recover reasonable attorney's fees from the holdover tenant.

361. Because both the Maryland summary ejectment statute and the URLTA would not authorize recovery of damages against the holdover tenant unless the holding over was willful and not in good faith, see text accompanying note 357 supra, limitation of damages that may be recovered by the landlord to an amount below actual damages is unfair.

362. See text accompanying note 320 supra.
363. See 1 American Law of Property § 3.94.
364. Id.
365. 1 American Law of Property § 3.2.
367. See text accompanying notes 328-61 supra; 1 American Law of Property §§ 3.32-.36.
services. In response to this concern, courts and legislatures have increasingly prohibited such retaliatory conduct by landlords.

The Maryland statute prohibits eviction of the tenant, an increase in the tenant’s rent, or a decrease in the tenant’s services, solely for the reason that the tenant has filed a written complaint with the landlord or with any public agency or that “the tenant is a member or organizer of any tenants’ organization.”

The URLTA similarly prohibits the landlord from increasing rent, decreasing services, or “bringing or threatening to bring an action for possession” after the tenant “has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;” has complained to the landlord of a violation of the landlord’s duty to maintain the premises; or “has organized or become a member of a tenants’ union or similar organization.” The Maryland statute, unlike the URLTA, does not specify to which governmental or public agency the tenant’s complaint must be directed; under the Maryland statute, the tenant would presumably be protected against retaliation for filing, without good faith, a frivolous complaint, or for filing, without good faith, a complaint with an administrative agency which does not have jurisdiction to take enforcement action against the landlord. On the other hand, the Maryland statute applies only where the tenant’s complaint to a governmental agency or landlord is made in writing, while the URLTA applies when the tenant “makes a complaint” to a governmental agency or landlord. The URLTA, unlike the Maryland statute, would apply when the tenant has made a complaint by telephone or in person. The Maryland statute also prohibits retaliation by the landlord against the tenant solely because the tenant “has filed a lawsuit, or lawsuits, against the landlord;” the tenant presumably would be protected when the lawsuit is frivolous and not filed in good faith.

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370. Md. Ann. Code, Real Prop. Art., § 8-208.1 (Supp. 1975). Id. § 8-203.1(b)(2) (Supp. 1975), prohibits the landlord, “who offers more than 4 dwelling units for rent on one parcel of property or at one location and who rents by means of written leases,” from placing a clause in the lease authorizing the landlord “to commence an eviction proceeding or issue a notice to quit solely and exclusively, without any other basis, as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord.” Md. Ann. Code, Real Prop. Art., § 8-206 (1974), regulates retaliatory evictions in Montgomery County.


373. URLTA § 5.101.


375. URLTA §§ 5.101(a)(1), (2).

The tenant raising retaliatory action as a defense would find other significant differences between the URLTA and the Maryland statute. Maryland allows the defense if the landlord acted “solely” in retaliation against the tenant. The burden implicitly is on the tenant to show that retaliation is the sole reason for the action and if the landlord can show any additional grounds for his action, the defense of retaliatory action presumably would not be recognized. The URLTA does not use the word “solely” with respect to the landlord’s reasons for certain conduct; it simply prohibits certain types of action for specified retaliatory purposes. Consequently, even if the landlord has reasons for his action in addition to a proscribed retaliatory reason, the URLTA might be interpreted to recognize the defense of retaliatory eviction.

The Maryland statute provides that actions by the landlord after six months from a determination of court or agency proceedings initiated by the tenant’s complaint are not retaliatory actions. The URLTA, on the other hand, provides that evidence that the tenant filed a complaint within one year prior to an alleged action of retaliation by the landlord raises a rebuttable presumption that the landlord’s conduct was retaliatory.

Neither the URLTA nor the Maryland statute, however, appear to be applicable to retaliatory non-renewal of a lease by the landlord. The Maryland statute refers only to retaliatory “eviction” of the tenant, which might not be interpreted to be applicable to non-renewal of a lease by the landlord for retaliatory reasons. The URLTA also might not be interpreted to apply to the landlord’s non-renewal of the lease, since it refers only to “bringing or threatening to bring an action for possession....” This is a substantial weakness, because under the common law the landlord may fail to renew a lease for any reason or no reason, but may not evict the tenant holding over pursuant to a written lease except for a material breach of a condition or covenant of the lease.

Pursuant to Section 5.101(c) of the URLTA, the tenant does not have the defense of retaliatory eviction to the landlord’s action for possession if the violation of the housing code which generated the complaint was primarily caused by a “lack of reasonable care by the tenant,” members of the tenant’s household, or a “person on the premises with his consent.” No such provision is contained in the Maryland statute. In addition, under the URLTA, the defense of retaliatory eviction is not applicable to the landlord’s action for possession if “the tenant is in default in rent” or the violations of the housing or building code require “alteration, remodeling or demolition

377. Id. § 8-208.1(a)(2).
378. Id. § 8-208.1(e).
379. URLTA § 5.101(b). “The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services.” Id.
381. URLTA § 5.101(a).
of the premises which would effectively deprive the tenant of use of the dwelling unit.\textsuperscript{382} The Maryland statute has no such exceptions to its coverage. Section 8-208.1(d) of the Maryland statute, however, makes the defense unavailable to tenants who have received a specified number of summonses for unpaid rent in the previous 12 months. The URLTA has no such exceptions to its coverage.

The Maryland statute authorizes a court to award reasonable attorney's fees and costs to a tenant who successfully raises a retaliatory action defense.\textsuperscript{383} This award is within the discretion of the court. Section 4.107 of the URLTA provides for mandatory award to a successful tenant of up to three months' periodic rent or threefold actual damages, whichever is greater, and reasonable attorney's fees.

The URLTA is preferable to the Maryland retaliatory eviction statute, because it applies when the tenant has made a complaint by telephone or in person, and makes the passage of time since the tenant's complaint only a rebuttable presumption, rather than a defense as in Maryland. In addition, the URLTA, unlike the Maryland statute, does not protect the tenant who, without good faith, makes a frivolous complaint to the landlord or governmental agency or makes a complaint to a governmental agency without jurisdiction over his complaint. The URLTA should be amended, however, to protect against retaliation when the tenant files a lawsuit against the landlord, and to protect against retaliatory non-renewal of a lease or retaliatory termination of a periodic tenancy.

VII. TERMINATION OF PERIODIC TENANCY

Where a tenancy is for a definite period of time, the common law does not require the landlord to give the tenant notice to quit at the end of the term, because the tenancy is considered to terminate by lapse of the specified period of time.\textsuperscript{384} In order to use the summary ejectment procedures in Maryland to eject the tenant who holds over after the termination of a lease for a definite term, however, the landlord must give the tenant written notice to quit at least one month before the expiration of the term.\textsuperscript{385} The URLTA does not require the

\textsuperscript{382} Id. § 5.101(c).

\textsuperscript{383} Md. Ann. Code, Real Prop. Art., § 8-208.1(c) (Supp. 1975). In addition to providing a defense to an action for possession by the landlord, the possibility exists that the landlord's retaliatory conduct may provide the basis for a counterclaim against the landlord for damages suffered by the tenant as a result of retaliatory rent increase, decrease of services, or eviction. The Maryland statute, however, is silent with respect to such counterclaims.

\textsuperscript{384} Trotter v. Lewis, 185 Md. 528, 45 A.2d 329 (1946). For a discussion of termination of a lease by the landlord for breach by the tenant of a rule, regulation, or covenant of a lease, see section on Tenant's Duty to Obey Rental Agreement and Rules and Regulations, at text accompanying notes 320-27 supra.

landlord to give a notice to quit at the end of term to the tenant under a fixed term lease before the landlord may bring a suit to eject the tenant if he holds over; the procedure under the URLTA, however, is not a summary procedure as in Maryland.

Early in the development of the common law, the courts held that if no period for the tenancy was specified in a rental agreement, a tenancy at will was created. A tenancy at will could be terminated by the landlord without prior notice to the tenant. Common law courts later held that a tenancy without a fixed term is a periodic tenancy rather than a tenancy at will; a periodic tenancy cannot be terminated by either landlord or tenant without prior notice to the other party. The length of a periodic tenancy is determined by the period for which rent is due and payable. A periodic tenancy may be created by express agreement or by implication, as where the tenant enters into possession and pays rent periodically, without an agreement or understanding as to the term of the tenancy.

Maryland specifies by statute the notice which must be given by the landlord in order to terminate a periodic tenancy. If the periodic tenancy is from year-to-year, the landlord must give notice at least three months before the expiration of the current year of the tenancy. In order to terminate a periodic month-to-month tenancy, the landlord must give notice at least one month before expiration of the period. The landlord, however, must give only a week's notice to a tenant in order to terminate a periodic week-to-week tenancy. If the tenant gives notice to the landlord of intent to terminate a tenancy, at least one month before the expiration of any lease or tenancy except a year-to-year tenancy (in which case three months' notice must be

386. URLTA § 4.301(c).
389. Id.
390. Id. Hall v. Myers, 43 Md. 446 (1876). A tenancy at will and a periodic tenancy could be terminated for any reason or no reason under the common law. See section on Retaliatory Conduct, at text accompanying notes 362-83 supra.
391. A periodic tenancy may be from year-to-year, month-to-month, week-to-week, or for some other period.
392. See Donnelly Advertising Corp. v. Flaccomio, 216 Md. 113, 140 A.2d 165 (1958). See also Rhynhart, supra note 387, at 5. A periodic tenancy may also be created when the tenant remains in possession with the consent of the landlord after the expiration of a lease for a definite term or after termination of a periodic tenancy. See section on Holdover Tenants at text accompanying notes 328-61 supra.
394. Id. § 8-402(b)(4) (Supp. 1975).
395. Id. § 8-402(b)(4). The Maryland statute also requires a month’s notice by the landlord to terminate a tenancy at will. Id. § 8-402(b)(1) (1974). The effect of this provision is to eliminate the common law rule that the tenant at will could be evicted or ejected without notice.
396. Id. § 8-402(b)(4) (Supp. 1975).
given), the landlord does not have to give the tenant written notice to quit. If the landlord fails to give the required notice by the time specified, the periodic tenancy presumably would not terminate until the end of the next periodic term.

The URLTA would eliminate year-to-year periodic tenancies in Maryland. Under the URLTA, unless the rental agreement fixes a definite term, the tenancy is a week-to-week tenancy in the case of a roomer who pays weekly rent, but in all other cases the tenancy is a month-to-month tenancy. This rule applies even when the holdover tenant remains in possession with the consent of the landlord at the end of a lease for a fixed term or after termination of a periodic tenancy. The URLTA would also change Maryland law by requiring the landlord or tenant to give 60 days' notice in writing in order to terminate a month-to-month tenancy. The URLTA would lengthen the period of notice required in Maryland for a landlord to terminate a week-to-week tenancy by requiring both the landlord and the tenant to give ten days' notice to terminate a week-to-week tenancy.

VIII. MITIGATION OF DAMAGES

The common law imposed no requirement on the landlord to mitigate damages by reletting the premises when the tenant had abandoned the premises before the end of the lease term. When the landlord failed to deliver possession at the commencement of the lease term, some common law courts held that the tenant was required to mitigate damages, while others did not.

397. Id. § 8-402(b)(5) (1974). Maryland provides that "no written agreement between a landlord and tenant shall provide for a longer notice to be furnished by the tenant to the landlord in order to terminate the tenancy than that required of the landlord to the tenant in order to terminate the tenancy." Id. § 8-501 (Supp. 1975).

398. See Id. §§ 8-402(b)(1) (1974), 8-402(b)(4) (Supp. 1975), 8-402(b)(5) (1974). Under this interpretation, if a landlord gives a month-to-month tenant, who pays rent on the first of each month, a notice to quit on the third day of the month, the tenancy would not terminate until the end of the following month. If the tenant vacates the premises and ceases to pay rent after failure to give the required notice, he may be deemed to have abandoned the premises; the landlord, after the tenant abandons, may mitigate damages or terminate the lease. See section on Tenant's Absence from or Abandonment of the Premises, at text accompanying notes 271-77 supra.

399. URLTA § 1.401(d). "Roomer" is defined by the URLTA as "a person occupying a dwelling unit that does not include a toilet and either a bath tub or a shower and a refrigerator, stove, and kitchen sink, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure." Id. § 1.301(12).

400. Id. § 4.301(c).

401. Id. § 4.301(b).

402. Id. § 4.301(a). The URLTA would also change Maryland law by requiring the tenant as well as the landlord to give notice in writing. Id. §§ 4.301(a), (b).

403. See text accompanying notes 271-77 supra.


Both the URLTA and Maryland have changed these rules. The URLTA states generally that an "aggrieved party has a duty to mitigate damages." Maryland requires an aggrieved party to mitigate damages if the damages result from the landlord’s or the tenant’s

1. Failure to supply possession of the dwelling unit;
2. Failure or refusal to take possession at the beginning of the term; or
3. Termination of occupancy before the end of the term.

The Maryland statute also provides that the duty to mitigate damages cannot be waived. Maryland, by specifically identifying certain instances in which the duty to mitigate damages is imposed, implicitly excludes other instances from the requirement to mitigate damages. Mitigation of damages should be required as a matter of public policy to keep injuries, resulting from disputes caused by breach of a duty by the landlord or the tenant, as small as possible. The URLTA is preferable to the Maryland statute because it broadly requires any aggrieved party to mitigate damages.

IX. A SHORTCOMING OF THE MARYLAND COMMON LAW AND THE URLTA: PROTECTION OF TENANTS AGAINST CRIME

In urban areas with high crime rates, tenants in residential rental buildings are increasingly subject to personal injury as a result of criminal acts of violence against them in common areas and on their premises. In addition, the tenant’s personal property is subject to theft by burglars if the landlord does not supply adequate security measures and devices to safeguard the premises. As a result of these dangers, tenants have become concerned with the systems and measures provided by the landlord in common areas and in their premises to protect their persons against injury from criminal attack and their personal property from theft.

Some courts have recently filled a vacuum in the common law by holding that the landlord has a duty to protect his tenants from personal injury which may result from foreseeable criminal attack in common areas. In addition, the tenant has been held to be entitled

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407. URLTA § 1.105.
409. Id. § 8-207(d).
410. In Klines v. 1500 Mass. Ave. Apt. Corp., 439 F.2d 477 (D.C. Cir. 1971), the landlord was held liable for injuries suffered by the tenant as a result of criminal assault in a common hallway. The court, although holding that the landlord was not an insurer of the tenant’s safety against criminal attack, noted that there had been several attacks on tenants in common areas under the landlord’s exclusive control. Consequently, the court held that the landlord was required to take reasonable measures to minimize these known threats to tenants’ safety. See Johnston v. Harris, 387 Mich. 569, 198 N.W.2d 409 (1972).
to recover damages from his landlord for the loss of personal property stolen from the premises when such theft was the foreseeable result of the landlord's failure to provide adequate security measures and devices for the premises after receiving notice of the defect in the security of the premises.411 Neither Maryland nor the URLTA, however, imposes a duty upon the landlord to protect his tenants from injury which may result from foreseeable criminal attacks in common areas and on the premises or to protect his tenant's personal property from a foreseeable risk of theft by burglars.

The landlord should have a duty to protect his tenants from criminal attack in common areas by providing reasonable security measures and systems412 where there is a foreseeable risk to tenants of criminal attacks in these areas under his control.413 Imposition of such a duty can be supported on the ground that the risk to tenants of criminal attack in common areas in the absence of reasonable security measures is as foreseeable as the risk to tenants of injury if the landlord fails to maintain the common areas in proper repair.414 The costs of security measures and systems that would be borne by landlords in complying with this duty can be recovered through rent increases, passing these costs on to all tenants proportionately over a period of time based upon a depreciation or amortization method. Tenants should not be responsible for providing such security measures and systems in common areas, since common areas are controlled by the landlord, although subject to use by tenants. In addition, tenants would have to rely upon voluntary contributions from all tenants to pay the costs of security measures and systems in common areas, while the landlord can collect these costs through the threat of eviction for non-payment of rent.

Landlords should also be required to install reasonable security measures for the premises of each tenant to protect the tenant's person and property from foreseeable criminal activity. Necessary security devices in particular premises would generally involve permanent additions, such as bars on windows, locks on doors, or alarms; such devices probably would be considered to be fixtures and thus not removable by the tenant upon termination of the rental agree-

412. Requiring the landlord to provide reasonable security measures and systems would not require him to assume the duties of the local police. The landlord, however, should provide security measures which are reasonable under the circumstances. Such measures might include: locks on all doors entering into the common areas; alarms that would be triggered if doors or windows entering into common areas were forced open; intercommunication devices for each premise; high intensity lighting of common areas; security officers; and closed circuit television systems to monitor common areas.
413. Whether the landlord must comply with this duty should depend upon the characteristics of the rental building, the geographical location of the building, and the rate of crime in the adjacent neighborhood.
414. See text accompanying note 141 infra.
If the tenant were required to install these systems or devices, he usually would have to pay for their costs at one time. If the landlord installed such devices, their cost could be passed on to the tenants in possession of the premises through rent increases over a period of time, pursuant to a depreciation or amortization method. If the landlord is not required to provide reasonable security measures and systems in each particular premise, tenants should be permitted to install their own security measures, such as locks on the doors or windows. Such action would not constitute waste. Installation of such devices could be made subject to the reasonable approval of the landlord in order to insure workmanlike installation; the landlord could be given the right to install such devices if he so chooses.

X. CONCLUSION

Despite shortcomings in the URLTA, it is an excellent starting point for legislative reformation of the common law governing landlord-tenant relationships. The URLTA’s application of modern contract principles to the interpretation and construction of residential leases can be expected to lead to “results more in accord with the legitimate expectations of the parties and the standards of the community....”

In certain areas, Maryland statutes, such as the retaliatory eviction statute, rent escrow statute, security deposit statute, and holding-over statute, afford greater protection to tenants than does the URLTA. As a consequence, the corresponding sections of the URLTA should not be enacted to repeal such Maryland statutes. The goal of uniform state statutes is desirable for many reasons, but enactment of the URLTA in its entirety may be unacceptable to the Maryland legislature because it would reverse the recent trend in Maryland to afford increased protection to residential tenants.

415. See 5 American Law of Property § 19.11.
416. See text accompanying notes 234-35 infra. The prohibition against waste by the tenant is expressed in Section 3.101(6) of the URLTA.
419. Id. § 8-211 (Supp. 1975).
420. Id. § 8-203 (1974).
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