

**THE LEGAL EFFECTS OF RESIDENTIAL  
LEASE AGREEMENTS**

**A COMPARATIVE VIEW OF THE IMPLIED WARRANTY OF  
HABITABILITY IN CIVIL LAW AND IN COMMON LAW**

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**ABSTRACT:** *The New Romanian Civil Code introduces the landlord's legal obligation to maintain the property safe and free from health hazards (implied warranty of habitability). The present article offers an analysis of the concept of housing safety and also presents the historical evolution of the regulations surrounding this concept from the standpoint of two legal systems, the civil law and common law legal system.*

**KEYWORDS:** *lease agreements; warranty of habitability; legal obligation; civil law; common law.*

**JEL CODE:** *K1, K12, K32*

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## 2. FITNESS FOR HUMAN HABITATION

The landlord's legal obligation to maintain the premises fit for purpose<sup>1</sup> throughout the lease means that the landlord must keep it fit for living, in the case of a residential lease agreement.

By definition of law, a home is not fit for living when "*it can expose the person to harm, that can affect the person's health, safety or state of well-being.*"<sup>2</sup> Per a contrario, a home is fit for living, when it is safe.

The idea that we also share, according to which the legal obligation to maintain a home fit for human habitation has its roots in the obligation to maintain the home fit for the purpose it was rented out for is explicitly worded by a Romanian law: "*repairing and maintaining the home safe and fit for purpose*"<sup>3</sup>

By definition, the word safe means a state of being sheltered from risks, hazards and accidents.<sup>4</sup> This way, a home is safe when it doesn't represent a threat to a person's physical or mental health. According to a statement made by the World Health Organization: "*Housing conditions affect people's health. Inadequate housing causes or contributes to many preventable diseases and injuries, including respiratory, nervous system and cardiovascular diseases and cancer*"<sup>5</sup>.

To prevent becoming ill because of unfit living conditions, many legislatures have created minimum standards that a home needs to meet in order to be deemed fit for human habitation.

The tenant's right for a habitable space has been recognized since ancient times. According to Roman law, a tenant could unilaterally denounce the rental agreement when finding deficiencies in goods during usage (Bob, 2015, p. 175). Examples can be found in Gaius's Digests (Bob, 2015, p. 176): the landlord must replace broken doors or windows and keep the blocking of natural light by a neighbouring building.

## 3. THE PRINCIPLES OF THE EUROPEAN UNION REGARDING THE CONCEPT OF FITNESS FOR HUMAN HABITATION

The right for a home is a fundamental right, protected by the Universal Declaration of Human Rights<sup>6</sup>.

The right has been reaffirmed by the International Covenant on economic, social and cultural rights<sup>7</sup>, ratified by Romania in 1974 by Decree nr.212. The UNO was tasked with applying the Covenant and analyzed the right for a home in General Commentary nr.4. The committee made the distinct observation that the right does not simply entail having a roof over one's head; it must be viewed *in extenso*, as "*a right to live in dignity, peace and safety*"<sup>8</sup>

<sup>1</sup> New Romanian Civil code, art. 1788, (3).

<sup>2</sup> 105 CMR 410.20

<sup>3</sup> Government Decision nr. 1275/200, art. 56.B.b

<sup>4</sup> <http://www.thefreedictionary.com/safety>

<sup>5</sup> <http://www.euro.who.int/en/health-topics/environment-and-health/Housing-and-health/housing-and-health>

<sup>6</sup> The Universal Declaration of Human Rights, art.25

<sup>7</sup> The International Covenant on economic, social and cultural rights, art.11

<sup>8</sup> Idem, art.7

The Committee outlined the criteria a home needs to meet in order to be deemed “adequate”<sup>9</sup> The criterias are the following: the landlord needs to provide a warranty against eviction and a warranty of habitability; the cost of lease needs to be maintained at an accessible rate that does not endanger the fulfilment of a person’s basic financial needs; the habitability of the space needs to be maintained through the means of protecting a person’s physical safety, minimizing the risks of illness and offering shelter against rough climate; the right for a home to be accessible to all should be ensured; protection against pollution needs to be ensured.

The above criteria contain that of habitability, which means that a home needs to meet minimum standards to be deemed fit for human habitation.

The Covenant obliges the member states of the European Union to take legislative measures that ensure that the right for adequate housing is respected; however the implementation of the above criteria is left to the discretion of the member states.

#### **4. THE CONCEPT OF FITNESS FOR HUMAN HABITATION IN THE COMMON LAW LEGAL SYSTEM**

The landlord’s obligation to maintain a home fit for human habitation was only born in the 20th century, in the common law legal system.

The late birth of the above obligation, in comparison to civil law can be explained by the differing views that the two legal systems have regarding residential lease agreements.

In common law, a lease agreement had the legal effect of transfer of ownership over the real estate to the tenant for the duration of the contract. As a result, the tenant became the owner (Harvey, 1966, p. 1143) and the beneficiary of the right to use the real estate, the only obligations the landlord had was to put the tenant in possession (Armstrong & Lamaster, 1985, p. 195) and to offer a warranty against eviction.

The landlord-tenant relationship was governed by the principle of *caveat lessee*, according to which the landlord was not obligated to transfer and maintain the object of the lease fit for purpose (Grimes & Lessee, 1968, p. 190).

It was left to the tenant to verify that the real estate was in habitable condition (Glendon, 1982, p. 511).

#### **5. THE MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION IN THE U.S.**

In the United States of America, landlord-tenant laws have suffered a lot of changes in the last two decades. “*The residential tenant, long the stepchild of the law, has now become its ward and darling. Tenants’ rights have increased dramatically; landlords’ rights have decreased dramatically*” (Rabin, 1984, p. 519).

Before the year 1969, residential lease agreements were viewed as a mixture of contract law and property law notions (Glendon, 1982, p. 504).

Standards of habitability were governed by the principle of *caveat lessee*, which can be summed up by the exclamation: “*Tenant, beware!*”<sup>10</sup> According to this principle, the

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<sup>9</sup> Idem, art.11

<sup>10</sup> <http://definitions.uslegal.com/c/caveat-lessee/>

tenant was responsible of maintaining the object of the rental agreement in habitable condition, by making all the necessary repairs, even if the damages were not caused by the tenant.

The rental agreement was an adhesion contract that profited the landlord.

In the 19th century, there was an expansion of tenant's rights: the expansion was caused by the fact that the number of tenants increased due to immigration and landlords started abusing their rights. This way, if the tenant was ousted from the leased premises before term by the landlord, the latter was liable on the covenant of quiet enjoyment and his rent was suspended or extinguished (Glendon, 1982, p. 512).

Over time, the notion of eviction was extended by the doctrine and by the judiciary. This led to the birth of the notion of constructive eviction (Glendon, 1982, p. 512). It was usually invoked in cases where the leased premises did not meet the minimum standards of habitability, for example it was lacking in heat or electricity. In order to successfully invoke constructive eviction, the tenant had to evacuate the premises to show that the latter had become uninhabitable.

Even though constructive eviction "*did not create any new duties, the remedy did indirectly alleviate some of the harsh effects of the rule that a landlord had no duty to deliver or maintain the premises in a fit, safe or habitable condition*" (Glendon, 1982, p. 513).

During 1960-1960, in the poor neighbourhoods of the U.S., the living conditions in rented spaces reached a critical point of decline. The tenants could not afford to make the necessary repairs, which lead to leased premises becoming unfit for human habitation.

The civil rights movement, led by Dr. Martin Luther King Jr, played an instrumental role in the change of landlord-tenant rights legislation. During the protests, the lack of satisfaction was also directed against the landlords that leased real estate in the country's poor neighbourhoods.

In an article published in a Journal of Law, the author investigates the factors that lead to the change in the legislation governing landlord-tenant law. The author used a personal letter, as evidence to sustain his point of view regarding the factors that contributed to the change of legislation. The letter was addressed to him by Judge J. Kelly Wright, who was one of the judges who had decided the famous *Javins* case that had revolutionized American case-law.

The letter contains the following passage: "*During the civil rights movement of the 1960s...most of the tenants in Washington, D.C. slums were poor and black and most of the landlords were rich and white. There is no doubt in my mind that these conditions played a subconscious role in influencing my landlord and tenant decisions*" (Rabin, 1984, p. 549).

The case of *Javins vs. First National Realty Corp*, mentioned above, is the case that introduced the concept of "*implied warranty of habitability*" in American law. The warranty introduced a new obligation to the landlord, that to maintain the leased premises fit for human habitation.

According to the facts of the case, the tenants of a residential space were sued by the landlord for failure to pay rent. The tenants argued that the cause for not playing was the landlord's failure to maintain the rented space fit for human habitation. There was evidence that the living space did not meet the minimum standards set by the Sanitary Code, more than 100 violations having been found, such as the presence of mice, bugs,

mouse excrements. In their defense, the tenants also argued that the residential lease agreement contained an implied warranty of habitability, based on the notion of constructive eviction.

The case was won by the tenants, the argument of the Court was: “*an implied warranty of habitability, in accordance with the standards set by the Housing Regulations of The District of Columbia can also be found implicitly in residential rental agreements*” (Ethel Javins versus First National Realty Corporation, 1970).

Judge Wright stated in a separate opinion that civil law has always viewed rental agreements as contracts; their decision is also based on this argument (Ethel Javins versus First National Realty Corporation, 1970).

As a result of the judgement and the nation-wide protests, “*society became concerned about the housing situation and President Kennedy declared it a public policy that every person had the right to live in a decent home*” (Ethel Javins versus First National Realty Corporation, 1970).

In order to improve living conditions, a series of laws were passed, amongst which The Uniform Residential Landlord Tenant Act (Armstrong & Lamaster, 1985, p. 198), that served as a base model for American landlord – tenant law.

This way, “*legislation has become the principle mode of regulation in the field*”<sup>11</sup> not the principles of common law causing a shift in the direction of judicial precedent, the Courts becoming “*obliged to mold the common law to the contours of the new relationship*” (Glendon, 1982, p. 528).

Nowadays, the researchers of the American Bar Foundation describe residential lease as “*decidedly pro-tenant legislation*” (Glendon, 1982, p. 528).

A passage from the Javins decision, referred to above, sums up the essence of the legislative changes. The Court regarded the modern tenant the same way as a consumer would be regarded because the tenant needs to rely on the knowledge and good faith of the landlord in similar fashion as a consumer does (Glendon, 1982, p. 530).

The comparison between residential lease and consumer contracts is current even today, because the warranty of habitability works the same way as the warranty for defective products, the term of the warranty being equal to the duration of the contract. If the leased premises do not comply with the health and safety regulations of the Sanitary Code and State Health Regulations, the tenant, after having notified the landlord, is entitled to either have the landlord do the necessary repairs, or do the work himself on the expense of the landlord. There is also a third possibility, to pay less rent because of the deficiencies in living conditions.

The Sanitary Code of every American State prescribes the minimum standards of fitness for human habitation. This way, determining whether the premises is fit for purpose can be done by the contracting parties, without specialized help.

Moreover, according to a legal norm called the anti-revenge clause, it is illegal for the landlord to unilaterally denounce the lease or increase the rent in 6 month after being notified by the tenant about the fact that the leased premises does not comply with the minimum standards of fitness for human habitation (Anon., 1970, p. 1043).

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<sup>11</sup> URLTA Law, 1972

## 6. THE CONCEPT OF FITNESS FOR HUMAN HABITATION IN THE CIVIL LAW LEGAL SYSTEM

The tenant's right to benefit from habitable living conditions has been recognized since ancient times.

In The Middle Ages, the laws became more diverse. The Corpus Iuris Civilis was no longer the only source of law, usages, emperor decrees and the laws of the Roman-Catholic Church were also recognized as sources of law. Voltaire described it in the following way: "*a traveller changes his laws as often as he changes his horses*".

Thus, social needs lead to the birth of the Napoleonic Civil Code in 1804, which was "*the first real codification since the Code of Justinian*" (Morandipre, 1948)

According to the French Civil Code, "*a lessor is bound to deliver the thing in good repair of whatever character*"<sup>12</sup> and to make all necessary repairs other than those incumbent on the tenant.<sup>13</sup>

This way, the Napoleonic Civil Code is a continuation of the Roman law principle of providing the upkeep of the rented goods.

The French Civil Code served as a model for European civil codes, such as the Romanian one. The Old Romanian Civil Code was enacted in 1864 and was the main source of Romanian civil law until the year 2011.

In the last 50 years, the Romanian legislation suffered some major changes regarding fitness for human habitability. The shift from communism to democracy, becoming a member of the European Union and the enactment of the New Civil Code are some of the causes that has led to changes in the minimum standards of fitness for human habitation.

## 7. THE MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION IN ROMANIA BEFORE 1989

Between the years 1946-1989, the Romanian Socialist Republic was governed by a communist regime that shared the ideology of social equality, characterized by the existence of a single social class and a single political party.

In the communist view the riches of the country belonged to the entire people. This way of thinking had major consequences on the way private property was being viewed.

In the year 1948, the Nationalization Law<sup>14</sup> was enacted and consequently all the fabrics, stores, hotels, restaurants and a part of homes became the property of the State.

This was followed by the enactment of the Law-Decree on the norms, divisions and usages of living spaces and the norms that govern landlord-tenant relationship, in the year 1952<sup>15</sup>. The spirit of the law is well captured in the following statement: "*The families of intellectuals, who were considered privileged by the old system, including in regard to their living conditions... were legally obliged to receive a lot of tenants.*" (Vasile, 2011, p. 123)

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<sup>12</sup> Napoleonic Civil Code, art.1720

<sup>13</sup> Ibidem

<sup>14</sup> Law nr. 119/1948

<sup>15</sup> Decree nr. 78/1952

The main provision of the law was the one that determined the minimum square footage that was necessary in order for a person to live in habitable conditions, according to the law this was 8 square meters. Some people were exceptionally entitled to more<sup>16</sup>, the minimum square footage was named sanitary or dwelling norm. By multiplying the number of people who were living in a home with the dwelling norm and subtracting the resulting number from the useful area of the dwelling, one could obtain a number, which was called surplus space.

For example, in a home consisting of three rooms in Cluj-Napoca<sup>17</sup>, the core family that consisted of three people was entitled to 24 square meters, which was roughly the equivalent of one room. The rest was called surplus space and was attributed to the State's tenants.

For example, in 1953 eight people were living in the dwelling: the owner's family lived in one room, the other room was occupied by a family consisting of three and the last room was being lived in by a student and a retired person.

Conclusively, the result of the above law was the creation of overpopulated dwellings that were not in accordance with the needs of the population regarding health, hygiene and safety.

## **8. THE MINIMUM STANDARDS OF FITNESS FOR HUMAN HABITATION IN ROMANIA AFTER 1989**

The year 1989, when the communist regime fell, was a turning point in Romanian legislation concerning the minimum standards of fitness for human habitation. The laws that set the dwelling norm were abolished which led to a decrease of overpopulated dwellings. Moreover, new laws were enacted regarding the minimum standard of fitness for human habitation in dwellings.

Such a law is the Dwelling Law<sup>18</sup>, which contains legal provisions in regards to residential leases, but also sets the minimum standards of fitness for human habitation. The law first refers to these minimum standards in the definition of the term dwelling, which according to the law is a space that has to: "satisfy the living needs of a person or a whole family"<sup>19</sup>.

The minimum standards of fitness for human habitation that are set by the law are: unrestrained and free access to the living space, separate living space for eating and sleeping, the existence of a sanitary group, access to electricity and water, controlled evacuation of used water and waste.<sup>20</sup>

This way, the dwelling law contains the minimum hygienic norms that a space that is being used for living has to meet, for more detailed description of these minimum standards special laws need to be consulted.

In 2007, Romania became a part of the European Union; consequently Romania assumed the obligation to transpose the European principles regarding the minimum standards of fitness for habitation.

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<sup>16</sup> Law-Decree nr. 78/1952, art.7

<sup>17</sup> Law nr. 144/1996, annex nr.1

<sup>18</sup> Law nr.114/1996

<sup>19</sup> Law nr.114/1996, art. 2 (a)

<sup>20</sup> Law nr. 114/1996, annex nr.1

Another important change of the Romanian legislation regarding fitness for habitation was brought on by the enactment of the New Romanian Civil Code, in 2011.

The New Civil Code introduced a series of new provisions regarding the landlord's obligation to maintain the premises fit for purpose. Under the Old Civil Code, if the landlord refused to make the necessary repairs, the tenant had to resort to the help of the Court. However, under the New Civil Code, the tenant can make the necessary repairs himself and is legally entitled to the compensation of the costs by the landlord, if the landlord had been notified when the necessity of repairs had come up.

## 9. CONCLUSIONS

The laws that govern the minimum standards of habitability have had a different evolution over time in civil law countries than they did in common law countries.

Common law has followed the path of an exponential function: after a long period of stagnation, where the landlord was not legally obliged to maintain the leased space so that it complied with the minimum standards of habitability, a turning point followed: that of the civil rights movement, led by Dr. Martin Luther King Jr. . The result was a radical, legislative change to the minimum standards of habitability.

In civil law, on the other hand, there are no sudden changes of direction regarding habitability. Dating back to Roman law, the minimum standards of habitability have followed a natural evolution, in tone with social evolution.

In our opinion, the two legal system's legislation will become alike in the near future. This likeliness already exists on a European level, by the means of legal harmonization, the common nucleus being the *aquis communitaire*.

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