

LANDLORD-TENANT LAW---RENT ABATEMENT GRANTED

Academy Spires, Inc. v. Brown (Essex County District Court, Docket No. T-238153, Decided July 13, 1970) by Nadine Taub, Community Legal Action Workshop, Newark.

This case involves the important question of whether a tenant who has deliberately withheld rent, without making repairs, may obtain an abatement in the rent owed, under the principles enunciated in Marini v. Ireland, 56 N.J. 130 (1970). The tenant occupied an apartment on the ninth floor of a 400-unit housing complex, under an oral lease. He withheld his rent for four months, alleging that the landlord had failed to supply heat and water service, that the incinerator did not function, that the hot water supply failed, that water leaked into the bathroom, that the venetian blinds were defective, that the plaster in the walls was cracked, and that the apartment was unpainted.

In this summary dispossession proceeding, Essex County District Court Judge Leo Yanoff held that the landlord had breached the warranty of habitability and that the tenant was entitled to a reduction in the amount of rent owed. The warranty of habitability was breached, he held, by the landlord's failure to provide heat, hot water, garbage disposal, and elevator service. Malfunction of venetian blinds, water leaks, wall cracks, and lack of painting, he ruled, did not create uninhabitability.

Judge Yanoff then addressed himself to the landlord's argument that under Marini the tenant had only two choices--to repair or to move out. Stating that strict adherence to the repair requirement would often render Marini meaningless to tenants in multi-family dwellings, he reasoned that the thrust of the law of New Jersey is in the direction of tenant and consumer protection and that to conclude that on facts different from those in Marini the Supreme Court would not grant relief to a tenant would be to emphasize form rather than substance. Rent abatement, he concluded, was justified on the facts here.

No expert testimony was introduced by the tenant to show the fair value of the premises without the services which the landlord was required to supply. Rather, in determining the amount of abatement to which the tenant was entitled, Judge Yanoff accepted the tenant's argument that there had been a percentage reduction in use which justified a corresponding percentage abatement in the rent. He found that the tenant was entitled to a 25 per cent reduction in his \$135 monthly rental.

Opinion.