

LANDLORD-TENANT - RENT ABATEMENT

Berzito v. Gambino (Superior Court of New Jersey, Appellate Division, Docket No. A-1556-70). By David Einhorn, Executive Director, and Nicholas J. Schuldt, Volunteer Attorney, Union County Legal Services Corporation.

In a per curiam decision, the Appellate Division panel of Judges Colleser, Mintz and Lynch reversed Judge McKenzie's County District Court opinion. (See prior discussion at 34 SCHR 6; 28 SCHR 10). The tenant contended that various conditions of uninhabitability existed in the apartment from the inception of the tenancy in October 1968. In February 1970 there was a default in rent and the institution of a summary dispossession action. At the June 1970 summary dispossession trial the court found a breach of the express warranty of habitability, and ordered rent abatement retroactive to the date of the summary dispossession proceedings. The present action was then commenced to obtain a reduction for the October 1968 to February 1970 period, and the landlord counterclaimed for the abatement already allowed in the dispossession action.

The Appellate Division gently questioned whether the conditions constituted a breach of the warranty of habitability, although it accepted the trial court findings that the landlord had made an express covenant in this regard. The Appellate Division interpreted Marini v. Ireland, 56 N.J. 130 (1970), as providing only two remedies to the tenant faced with uninhabitable conditions, namely the choice of claiming constructive eviction and seeking housing elsewhere, or making the repairs and then offsetting the repairs against the rent. Then, noting the appearance of the rent abatement doctrine in Academy Spires, Inc., v. Brown, 111 N.J. Super. 477 (Essex County District Court 1970), the appellate panel concluded that the original abatement relief granted in the summary dispossession proceeding "effected an equitable disposition of the parties' rights," and that no abatement for the period from October, 1968 to February, 1970 should be awarded.

Plaintiff currently is seeking certification from the New Jersey Supreme Court. The State Office of Legal Services, the New Jersey Tenants Association, and the Urban Legal Clinic at Rutgers are seeking to intervene as amicus curiae.

Decision.

