

LANDLORD-TENANT LAW---TENANT OBTAINS PARTIAL REFUND OF RENTS  
PAID FOR NONHABITABLE DWELLING

Berzito v. Gambino (Union County  
District Court, Docket No. 123341,  
Decided March 5, 1971) by Nicholas J.  
Schuldt, Union County Legal Services.  
APPROVED FOR PUBLICATION

This is a follow-up to Gambino v. Berzito, 21 State Clearing House Report 8 (August, 1970), in which tenant Berzito was granted a reduction in back rent owed. Berzito had withheld his \$35 per week rent for approximately five months, and in a summary dispossess action the amount of back rent owed for the five-month period was cut approximately in half, to \$75 per month.

The tenant then instituted this suit to recover a portion of the rent which he had paid in full during the sixteen months he had resided in the apartment prior to withholding his rent. The Landlord counterclaimed for the rent abated in the summary dispossess action. Judge A. Donald McKenzie heard the matter de novo, ruling that the findings of the court in the dispossess proceeding were not res judicata.

In a decision rendered March 5, Judge McKenzie ruled that the tenant was entitled to a return of \$1,180 of the \$2,380 which the landlord had received for the period between November, 1968, and February, 1970. Judge McKenzie based this ruling on an express covenant by the landlord to remedy nonhabitable conditions which existed when the tenant moved into the premises, rather than on the implied warranty of habitability (which, he contends, does not apply to conditions which are obvious to a tenant at the time of the letting). Some of the conditions which breached the express covenant were: a lack of screens and storm windows; missing windows boarded up; gaps in window sash and door frames; no radiators in two of the four rooms; holes in floors and walls; falling plaster; inoperable electric fixtures; sewage backup in cellar; and infestation by rats and rodents. No rebate was given for one month of occupancy because the land-lord was entitled to that period of time to complete the repairs promised.

Since the tenant was a welfare recipient and received the full amount of her rent from the Union County Welfare Board, Judge McKenzie ruled that the refunded rent monies should be paid to the Board rather than to the tenant herself. However, the Board decided to make no claim on the monies.

Opinion.

