

CASES

* * *

LANDLORD-TENANT LAW---LANDMARK DECISION BY NEW JERSEY SUPREME
COURT IN MARINI

Marini v. Ireland (New Jersey Supreme Court, decided May 18, 1970) argued by Gordon V. Lewis, Camden Regional Legal Services, with Messrs. Joseph V. Ippolito and Kenneth Meiser on the brief. Richard J. Pilch argued the cause amicus curiae for the State Office of Legal Services.

As previously noted, 15 State Clearing House Report 1, 9 (February 16, 1970), this is an action seeking to establish that a tenant, forced to make repairs when his landlord fails to repair, can deduct the cost of self-help repairs from rental payments.

On June 27, 1969, Defendant-Appellant Marini had engaged a plumber to repair her apartment toilet so that she and her children might have the use of the bathroom, having tried unsuccessfully for over a month to have her landlord make the repairs. Appellant then deducted the cost of the repairs, (\$87.72), from her monthly rental payment. Landlord Ireland succeeded in obtaining a judgment for possession for non-payment of rent in Camden County District Court. After the Appellate Division had granted a stay of the judgment, and before the Appellate Division heard argument on the appeal, the Supreme Court certified the case on its own motion under R. 2:12-1.

In one of the most important decisions for New Jersey tenants in modern times, the Supreme Court handed down a decision which provides for the following:

1. As a result of the Marini decision, there now exists in every residential lease an implied covenant that (a) at the time of the leasing there were no latent defects in "facilities vital to the use of the premises for residential purposes," and that (b) those facilities "will remain in usable condition during the entire term of the lease."

2. Under that covenant, the landlord has a duty to maintain the premises in a livable condition and to repair damage to vital facilities whenever the damage results from latent defects or ordinary wear and tear. If the landlord does not perform his obligations, the tenant may make reasonable repairs himself and deduct the cost of the repairs from future rents. Before repairing and deducting, the tenant must give, or make reasonable attempts to give, adequate notice to the landlord so that the landlord has an opportunity to perform the repair work.

3. In summary dispossession proceedings in County District Court, equitable as well as legal defenses may be asserted by the tenant and must be considered by the Court.

4. The failure of the County District Court to hear a tenant's evidence that there is no rent owing or that rent is not owed in the amount alleged by the landlord is appealable under N.J.S.A. 2A:18-59 on the ground of lack of jurisdiction.

Two of the more important questions which remain unanswered in the wake of the Marini decision are:

1. What types of defects fall within the category of "vital facilities necessary to maintain the premises in a livable condition?" For example, in order to protect the health and safety of occupants, may the tenant repair falling plaster, repaint walls presently covered with lead-based paint, or eliminate vermin?

2. What are the mechanics of the procedure to be followed when the repairs which the tenant seeks to make will cost more than one month's rent? May the tenant withhold rent until he has accumulated enough to make the repairs, or must he make the repairs piecemeal, each month giving the landlord a receipt for expenditures in the amount of the monthly rent?

