

10 §9099. IMPLIED WARRANTY AND COVENANT OF HABITABILITY

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1. Implied warranty of fitness for human habitation. In any written or oral agreement for rental of a space in a mobile home park, the park owner or operator is deemed to covenant and warrant that the space and its associated facilities are fit for human habitation.

[1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Complaints. If a condition exists in a space which renders the space unfit for human habitation, a tenant may file a complaint against the park owner or operator in the District Court or Superior Court. The complaint must state that:

A. A condition, which must be described, endangers or materially impairs the health or safety of the tenants; [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The condition was not caused by the tenant or another person acting under the tenant's control; [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Written notice of the condition was given without unreasonable delay to the park owner or operator or to the person who customarily collects rent on behalf of the park owner or operator.

(1) This notice requirement may be satisfied by actual notice to the person who customarily collects rents on behalf of the park owner or operator; [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. The park owner or operator unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

E. The tenant was current in rental payments owing to the park owner or operator when written notice was given. [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

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3. Remedies. If a complaint is filed under this section, the court shall enter any temporary restraining orders that are necessary to protect the health or well-being of tenants or of the public. If the court finds that the allegations in the complaint are true, the park owner or operator is deemed to have breached the warranty of fitness for human habitation established by this section as of the date when actual notice of the condition was given to the park owner or operator. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.

A. The court may issue appropriate injunctions ordering the park owner or operator to repair all conditions which endanger or materially impair the health or safety of the tenant. [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The court may determine the fair value of the tenant's use and occupancy of the space from the date when the park owner or operator received actual notice of the condition until the time that the condition is repaired and further declare what, if any, money the tenant owes the park owner or operator or what, if any, rebate the park owner or operator owes the tenant for rent paid in excess of the value of use and

occupancy. In making this determination, there is a rebuttable presumption that the rental amount equals the fair value of the space free from any condition rendering it unfit for human habitation. [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. The court may authorize the tenant to temporarily vacate the space if the space must be vacant during necessary repairs. No use and occupation charge may be incurred by a tenant until the tenant resumes occupation of the space. If the park owner or operator offers reasonable alternative housing accommodations, the court may not surcharge the park owner or operator for alternate tenant housing during the period of necessary repairs. [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. The court may enter any other orders that it considers necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation. [1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Waiver. A written agreement under which the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration is binding on the tenant and the park owner or operator.

Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section is void.

[1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

5. Municipal ordinance or rule. Municipalities may adopt or retain, by ordinances or rules, standards more stringent than those provided in this section. Any less restrictive municipal ordinance or rule establishing standards is invalid and suspended by this section.

[1987, c. 737, Pt. C, §1 and Pt (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

6. Applicability to renter. Notwithstanding the definition of "tenant" in section 9091, subsection 5, this section applies to a person who rents a mobile home and rents the mobile home park lot on which the mobile home is located from a mobile home park operator.

[1991, c. 661, §2 (NEW) .]

SECTION HISTORY

1987, c. 737, §§B1,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

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