





NLIHC State and Local Tenant Protection Series: A Primer on Renters' Rights

Code Enforcement and Habitability Standards Toolkit

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Introduction: State and Local Innovation Tenant Protection Toolkit Series

Tenant protections, passed in the form of laws and policies, are critically important tools for protecting tenants against rising rental costs, discriminatory and arbitrary eviction practices, and other threats to housing stability. Tenant protections can help level the playing field between landlords and tenants, rectifying the longstanding power imbalance that impacts the lowest-income and most marginalized renters. Since January 2021, states and localities across the country have implemented more than 300 new tenant protections.

This toolkit is one of a series of tenant protection toolkits released by the National Low Income Housing Coalition's (NLIHC) State and Local Innovation (SLI) initiative during the summer of 2024. The toolkits cover four tenant protections: just cause eviction standards, rent stabilization policies, laws that strengthen habitability standards and code enforcement procedures, and laws that limit excessive rental fees. Each of the four toolkits provides an overview of one major tenant protection, details the common components of the protection, lists information about state and local jurisdictions that have adopted the protection, suggests provisions that should be taken

into consideration when enacting the protection, and highlights complementary policies that can be passed alongside the protection to ensure it has the greatest impact possible. The toolkits are meant to provide foundational information about the core components of select policy interventions that can keep tenants stably housed - and free from the threat of eviction – and to help spark dialogue around the critical importance of state and local tenant protections. Alongside the toolkits, the SLI team is also releasing a series of tenant case studies and hosting a webinar series focused on building momentum for the passage of tenant protections at the state and local levels.

The toolkits were developed through analysis of the protections included in NLIHC's tenant protections database and discussion with state and local tenant advocates and housing-justice focused policy and advocacy organizations. The invaluable advice, research, and insights provided by our partners – including members of NLIHC's Collective, a cohort of tenant leaders working to uplift the voices of the most marginalized and lowest-income renters nationally – helped inform the material presented in the toolkits.

The successful passage, implementation, and enforcement of tenant protection policies would not be possible without the work of tenant leaders and advocates willing to share their lived experiences and dedication to housing justice. As such, lawmakers in state and local jurisdictions across the country should center the voices and unique perspectives of tenants in the process of crafting, advocating for, and enacting tenant protection policies. To learn more about NLIHC's work around tenant engagement, please visit: https://www.nlihc.org/ideas

NLIHC's SLI project was launched in April 2024 to support state and local partners in advancing, implementing, and enforcing tenant protections, creating and sustaining emergency rental assistance programs, preventing the criminalization of homelessness, and supporting the advancement of housing innovations that seek to keep eviction rates down and prevent homelessness. The initiative aims to empower a movement that will strengthen tenants' rights, prevent evictions, and promote housing stability for renter households with the lowest incomes.

For more information on NLIHC's SLI initiative, please visit: https://nlihc.org/state-and-local-innovation

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Introduction

Safe, stable, and affordable housing has long been established as a social determinant of health and wellness, impacting the outcomes of both adults and children.¹ Growing up or living in housing with health and safety hazards can lead to increased risk of negative physical and mental health outcomes, including asthma, cardiovascular diseases, stress, and depression.² While housing quality in the U.S. has generally improved over the last 20 years, concerns related to habitability are still commonplace in the private rental market, with habitability issues impacting approximately one in six renters every year.³

Moreover, households experience severe housing problems in racially disproportionate ways.4 The United Health Foundation's America's Health Rankings Annual Report for 2020 (over a 5-year estimate) indicates that Hispanic households have experienced severe housing problems at the highest rate (29.9%), followed by Black households (25.3%), American Indian/Alaska Native households (24.2%), and Asian/Pacific Islander households (22.7%). In comparison, white households were least likely (13.4%) to experience severe housing problems.⁵ The lowest-income and most marginalized renter households can be hesitant to report the presence of health and safety hazards for fear of retaliation, which allows for such issues to persist.

Currently, there is a patchwork of federal laws and regulations that establish a minimum set of housing quality standards for rental housing. While there are federal laws that mandate enhanced disclosure requirements for lead in rental housing,⁶ federal laws and regulations that deal specifically with habitability apply only to housing units that receive federal funding through such programs as the Section 8 Housing Choice Voucher (HCV) program and the Housing Opportunities for Persons With AIDS (HOPWA) program.

The regulations that oversee the HCV program ("24 CFR Part 982") define basic housing quality standards (HQS) that units must meet before assistance can be paid on behalf of a household as well as annually throughout the tenancy. To ensure the safety and well-being of a tenant, a unit must have sanitary facilities, a space for food preparation, sufficient living space and security, working heating and cooling facilities, and working lights and electricity, among other requirements. 8

Given that there are no federal laws applying to the private rental market that clarify the role of landlords and property owners in providing adequate housing, the Biden-Harris administration released in 2023 The White House Blueprint for a Renters Bill of Rights, which enshrines a tenant's access to quality housing as the document's first principle, stating that "owners of rental housing and state and local governments should ensure that homes for rent meet habitability standards and are free of health and safety hazards, such as lead or mold."9

As such, advancing laws that strengthen habitability standards and code enforce-

ment procedures at the state and local level is crucial, especially considering that many states already have in place a minimum set of habitability standards, known also as an "implied warranty of habitability." 10 Strengthening habitability laws can ensure that a state or local jurisdiction upholds proactive enforcement procedures related to habitability standards, which is especially important because the enforcement of such laws has historically been weak. These laws can also remove the burden from tenants to report issues with their units when they may fear retaliation or eviction by instead placing inspection and code enforcement responsibilities with the administrative agency tasked with overseeing the law. When coupled with anti-retaliation provisions, moreover, these laws can rectify habitability concerns without tenants fearing displacement. These laws can thus help ensure that all rental units within a jurisdiction are safe, in good repair, and habitable for tenants.

Causes of Habitability Concerns in Rental Housing

Habitability concerns go unchecked – and ultimately unfixed – for a range of reasons, including a tenant's lack of awareness of where or reluctance to report concerns, lack of administrative capacity to inspect or enforce code violations, and an absence of proactive enforcement processes by state and local governing bodies.¹¹

In 2021, data collected from the City of Philadelphia's code enforcement program found that only 7% of all rental units in Philadelphia are inspected each year. 12 Without proactive inspection processes in place, the city relies on a complaint-driven system to identify which properties should be inspected. The result is an incomplete understanding of the total housing market and the conditions of rental properties in the housing market. Meanwhile, a 2024 internal audit in the District of Columbia found that the municipality's entire code enforcement system was in disrepair due to a lack of capacity that resulted in operational burdens, causing newly hired inspectors to receive inadequate training, code violation notices to be sent to the wrong addresses, and maintenance issues to go unfixed for extended periods of time.¹³

Fear of retaliation by landlords and property owners can also make tenants reluctant to report maintenance issues and habitability concerns they experience. It is important to note that most states have implemented laws that prohibit retaliatory, harassing, or discriminating behavior, like decreasing a tenant's services, refusing to accept rent, or evicting a tenant for acting in good faith (such as by reporting a housing code violation to the proper government agency). However, such retaliatory behavior is difficult to identify and prove in court, and tenants may not be aware of the protections that are afforded to them as renters, allowing health and safety risks to persist.

Impact of Habitability Concerns in Rental Housing

Faulty housing structures and conditions can reduce the safety and quality of housing and have detrimental impacts on tenants' health, well-being, and overall housing stability. Substandard housing conditions pose a particular risk to young children, seniors, and people with chronic illnesses. ¹⁵ The presence of habitability-related concerns can also increase a tenant's risk of experiencing housing instability.

The U.S. Office of Disease Prevention and Health Promotion has found a direct link between housing quality and mental and physical health. Poor housing quality exacerbates negative health outcomes, especially among children and families. For children in particular, poor housing quality can have

effects that persist well beyond childhood. For example, prolonged exposure to lead can cause delayed cognitive development.¹⁶ Leaky pipes can cause mold growth in a residence, increasing the likelihood of asthma in both adults and children. Meanwhile, lack of heating in a residential unit during winter months leads to chronically cold indoor conditions that are associated with heightened risk of depression.¹⁷

A 2021 study conducted in Arkansas, which was one of the last remaining states to institute minimum habitability standards for tenants in private market rental housing, found that the absence of habitability laws in the state negatively impacted the health of residents. Substandard housing resulting from pest infestations, mold, plumbing concerns, leaks, poor ventilation and improper heating facilities, noise pollution, and air pollution was found to cause a range of negative health effects for residents, including asthma, head-

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'The presence of health and safety issues can result in increased financial burdens for tenants, as tenants may try to remedy the problem themselves, or in increased housing instability, as tenants may choose to relocate rather than report an issue to a landlord they fear may be unresponsive or may retaliate. Tenants may choose to self-evict or leave a property under threat of a forced move from a landlord or property owner (without a formal eviction having been filed with the court) due to instances of retaliatory behavior."

aches, fevers, changes in blood pressure, and mental and psychological distress.¹⁹ Further research found that a lack of habitability standards prior to 2021 (when the state's law had been implemented) had created burdens for tenants, placing the onus of maintaining a habitable housing environment on renters instead of landlords and property owners.²⁰

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a landlord or property owner (without a formal eviction having been filed with the court) due to instances of retaliatory behavior.

Retaliation can occur when a landlord or property owner threatens an eviction against a tenant for reporting a habitability concern through the proper channels or to the department tasked with overseeing the enforcement of a municipality's housing codes. Such behavior can often be difficult to prove in a court of law, especially when it takes place through verbal means.²¹ As a result, a tenant may choose to self-evict rather than go through the legal eviction process.

Laws Strengthening Habitability Standards and Code Enforcement

Since January 2021, NLIHC has tracked the passage of laws strengthening code enforcement and habitability standards in six states – Colorado, Georgia, Minnesota, Nevada, Utah, and Washington – and seven localities across the country (Los Angeles County, CA; Santa Monica, CA; New Orleans, LA; Frederick, MD; Cincinnati, OH; San Antonio, TX; and Olympia, WA). While laws related to habitability standards differ based on state and local context, particularly regarding how each jurisdiction enforces its law, all laws aim to address health and safety concerns and ensure safe, stable, and affordable housing for renters by:

- Ensuring that all housing in the private rental market conforms to a minimum set of habitability standards;
- Ensuring that tenants have access to information related to their rights under habitability laws;
- Expanding the housing conditions covered under a municipality's warranty of habitability;
- ◆ Increasing resources for enforcement;
- Implementing and improving enforcement mechanisms; and/or

 Preventing landlord retaliation against tenants for reporting concerns related to housing health, safety, or habitability.

Through an analysis of legislation addressing habitability standards and proactive code enforcement procedures as well as through engaging tenant leaders in NLIHC's Tenant Leader Collective, NLIHC has identified common components that are critical to such laws. These common components include the following:

- ◆ A definition of 'habitability' and explanation of the duties of landlords to maintain habitable premises.
- ◆ Information about notices and timeframes for landlords to remedy violations.
- Mechanisms for enforcing landlord compliance.
- ◆ Anti-retaliation protections for tenants.

Tenant advocates recommend that habitability laws include an explicit right of tenants to live in a safe and habitable property. Tenant advocates also recommend that such laws ensure that tenants can assert an affirmative defense in court; include anti-retaliation protections for tenants who report a housing code violation; create rental registries; define the consequences that can arise from a failure to comply with the law; and offer monetary or relocation assistance to tenants.

DEFINITIONS OF HABITABILITY AND DUTIES OF LANDLORDS TO MAINTAIN HABITABLE PREMISES

Laws strengthening habitability standards and code enforcement processes and procedures rely on explicit definitions of habitability and legal guidelines to outline the responsibilities of landlords to maintain safe and habitable premises. Providing a clear definition of habitability ensures that tenants are aware of the standards to which rental units are held, and outlining the responsibilities of landlords helps to guarantee that all parties, tenants and landlords alike, are aware of their responsibilities at every stage of a lease term, facilitating in turn clear communication and timely resolution of issues when they arise.

Defining habitability

State and local habitability protections often link a tenant's obligation to pay rent to their landlord's compliance with state and local housing code and habitability standards.²² Housing code and habitability standards define the minimum standards or requirements that must be maintained by a landlord both in individual units and in common areas related to general maintenance, plumbing, heat, hot water, electricity, sanitation, and other areas that impact the health and safety of residents.

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While habitability laws commonly cite heat, electricity, and working kitchen facilities as being essential to habitable premises, several other services and conditions are also commonly considered essential to habitability, including:

- ◆ Functioning electrical systems.
- Heating and cooling facilities that conform to state or local laws.
- Plumbing, including properly functioning sanitary facilities.
- Availability of hot and cold water.
- ◆ Appliances that are properly installed and in safe working condition.
- ♦ No evidence of mold.
- Roof, windows, and exterior doors that are free of defects, that prevent dampness in the building, and that do not leak.
- Operable fire, smoke, and carbon monoxide systems.
- ◆ Interior and exterior surfaces free of cracks, decay or other defective surface conditions.
- Building, grounds, and common areas that are maintained as clean, sanitary, and free from debris, garbage, rodents, insects, and vermin.

 An adequate number of appropriate receptacles for garbage in clean condition and good repair and an agreement for garbage removal.

In Utah, the "Fit Premises Act" of 2021 details a landlord and property owner's responsibility for maintaining habitable housing, defining a habitable premises as "safe, sanitary, and fit for human occupancy."23 Meanwhile, housing advocates in Georgia led a successful campaign in 2024 to secure the passage of "House Bill 404," a law that requires minimum habitability standards to be enforced statewide. Under Georgia's law, a landlord is required to provide a rental unit that is fit for habitation, including by ensuring cooling, heating, lighting, and water services. Similarly, in addition to heating, cooling, and hot and cold water, the City of New Orleans's "Healthy Homes" ordinance requires that a residence have an "operable fire and smoke detection system, no evidence of mold, sealed floors, roofs, and windows, and interior walls free of cracks or decay."24

Many habitability laws include definitions that link habitability to overall well-being. Cincinnati's law, which was passed through "Ordinance No. 2023-02211," adopts a definition of habitability that is intertwined with a landlord or property owner's responsibility to uphold adequate living conditions to ensure the occupant's health or safety throughout the

duration of the lease term. Likewise, a Minnesota law, passed through "Senate Bill 2909," affirms that a residential property lacking essential services (where essential services are considered determinants of health) can put tenant well-being at risk and classifies housing where such health and safety risks are present as being in an emergency condition.

Recommendation from Tenant Advocates

Explicitly note that tenants have a right to safe and habitable property. Not only should units include essential services, such as heating, plumbing, and running water, but exterior environments should be habitable as well. Such habitability standards should include the right to a secure building and common living spaces. Typically, external environments are covered in state and local housing codes, but additional provisions covering external premises and surrounding areas are critical to ensuring habitability.

Duties to ensure habitable premises

In addition to defining habitability, laws strengthening code enforcement and habitability standards should identify the land-lord's roles and responsibilities to ensure habitability, including proactive requirements and mechanisms for reporting violations, who is responsible for making repairs, and the timeframe for doing so.

Minnesota's "Senate Bill 2909" amended the state's landlord-tenant laws to allow a person to petition the court for the rectification of a habitability concern if critical services and facilities were not provided by the landlord. The amended language expands the list of habitability violations to include infestation, a nonfunctioning refrigerator, a nonfunctioning air conditioner (if air conditioning services are included in the lease), and lack of a functioning elevator (if a lease guarantees access to an elevator).

At the local level, cities such as <u>San Antonio</u>, <u>TX</u>, <u>Santa Monica</u>, <u>CA</u>, and <u>New Orleans</u>, <u>LA</u>, passed stronger code enforcement laws that require landlords and property owners to address maintenance requests, while Cincinnati, OH, passed two distinct code enforcement bills allowing city officials to make emergency repairs to properties as needed.

Frederick, MD, passed "Ordinance No. G-23-09" in 2023 to clarify and revise a proactive residential rental licensing program. The ordinance lists exterior and interior property conditions that need to be met by landlords and property owners and that were previously established through the "Property Maintenance Code of the City." 25 In total, there are 40 requirements that must be certified as present by a unit's owner and/or manager, with 18 metrics focused on exterior habitability requirements and 22 focused on interior habitability requirements. Not only is a landlord tasked with ensuring outdoor sanitation, proper roofing and drainage, and working stairs, decks, and porches, but a landlord must also ensure minimum ceiling heights, that their property is free from infestations, and that the property has plumbing and water heating facilities, among other services.

NOTICE AND TIMEFRAME REQUIRE-MENTS FOR REMEDYING VIOLATIONS

Requiring proper notice for landlords and tenants regarding violations ensures transparency about remedies and repairs that need to take place and the responsibilities of landlords and tenants while violations are being addressed. State laws and local ordinances should also establish reasonable timeframes for landlords to address violations and requirements for notices to be provided to tenants on violations, the status of any repairs, and who to contact for more information.

San Antonio's "Ordinance No. 2023-03-23-0166," which applies to apartment complexes of five or more units, defines the reasonable time to remedy or repair violations as 10 calendar days. In cases of violations that are not rectified, the law lays out the consequences for not making the required repair within the established time-frame, including points that are to be issued against a landlord or property owner and that can result in a citation or ticket.

In Los Angeles County, the "Rental Housing Habitability Program" ordinance passed in April 2024 and that goes into effect in October 2024 requires landlords and property owners to rectify a habitability concern within 21 calendar days of the notice of the violation, though a building inspector is within their right to offer an extension to the landlord not exceeding 30 calendar days. However, any maintenance issue that poses an imminent threat to a tenant's safety or well-being must be rectified by a landlord or property owner within 24 hours of the violation being communicated. The countywide program also requires landlords and property owners to submit to inspections of their rental properties every four years.

In Colorado, "House Bill 23-1254" was passed in 2023 to ensure that rental residences are fit for habitation after environmentally linked public health events, such as wildfires, and provides notice requirements for both landlords and tenants. The law mandates that a landlord or property owner must provide written explanation to a tenant of when a given habitability issue will be rectified. Under the law, a tenant must provide notice of any damage to a property to a landlord or property owner. A landlord then has up to 72 hours from receiving notice that the residential unit is inaccessible due to damage to respond to the notice and must provide a timeline for when any repairs to the property will take place.

ENFORCEMENT MECHANISMS

Historically, problems involving the implementation and enforcement of a state's implied warranty of habitability laws have hindered their success. As such, lawmakers have often sought to create stricter mechanisms for ensuring that a habitability law is effective and is succeeding in helping the greatest number of tenants. Many laws strengthening habitability standards and code enforcement procedures lay out explicit penalties for failing to comply with their mandates. Those in violation of the law often face penalties such as fees, loss of their license and the ability to rent their units, or even criminal or civil charges.

In Detroit, landlords may lose their rental inspection certificate if they are found to be in violation of the minimum requirements set forth in the city's law or if they refuse to adhere to the city's inspection and registration requirements. In San Antonio, a landlord in violation of the policies set out by the "Apartment Inspection Program" may receive a Class C misdemeanor under state law, with a maximum financial penalty of \$500.

At the local level, New Orleans's "Healthy Homes" program enforces habitability standards by requiring landlords and property owners to register their rental units with the city to receive a "Certificate of Compliance," which can then be used to identify rental housing units through a rental database that includes: (1) the address of the registered unit; (2) information regarding past and present inspections, including the result of any inspections; (3) the date on which the landlord's compliance certificate was issued; (4) any violations that were cited at the property; and (5) any instances in which a landlord's compliance certificate was rescinded. To receive a certificate of compliance, lessors must provide their contact information, a statement certifying that there are no outstanding property taxes connected to the unit, and documentation that a recent inspection of the unit has been conducted and that the unit meets minimum rental standards. If landlords and property owners do not register by the required dates, they receive a fine. Periodic inspections are also conducted to

ensure compliance with minimum rental standards. If the rental unit does not meet the minimum rental standards, follow-up inspections are conducted, at the lessor's expense, until the violation is cured.

San Antonio's "Ordinance No. 2023-03-23-0166" requires landlords and property owners of five or more units to submit to proactive rental inspections to ensure rental units meet minimum habitability and safety standards. If a property owner is found to be in violation of the city's housing codes, they have 10 days to correct any violations that are found during the inspection of the unit. If the code violation is not addressed by the time of the required follow-up inspection, the property owner will receive points on their rental record. If the property owner receives three or more points within a six-month period, they are required to register in the city's "Apartment Inspection Program," which requires the property owner or landlord to pay a registration fee and submit to monthly inspections.

Cincinnati's "Residential Rental Property Inspection Program" requires property owners and landlords to submit to proactive rental inspections by first applying for a rental inspection certificate, which requires payment of a fee and an initial inspection of all units in the property. When the initial rental inspection is conducted, if the property complies with the city's housing codes and legal habitability standards, the next inspection occurs after four years have passed. If a property is found not to comply

with the law, the property is re-inspected at 30-day intervals until it no longer has a code violation or habitability issue. The property owner or landlord is required to pay for each new inspection of the rental property, with fees ranging from \$70 for the first re-inspection to \$280 for the fourth re-inspection and for subsequent re-inspections.

ANTI-RETALIATION MEASURES

Tenants who report a habitability concern or note the subpar condition of their rental property through the appropriate channels - often a city or state's health department or code enforcement agency – are occasionally subject to retaliation from a landlord or property owner, who might refuse to make the necessary repairs to a unit instead of bringing the rental property up to code. Retaliatory behavior can include a decrease in a tenant's services, refusal to accept a tenant's rent, holdover of the tenant's lease agreement as a condition for eviction, and even threats or intimidating behavior. As of 2024, such behavior is illegal in 42 states. However, retaliatory behavior is often difficult to prove in a court of law, which allows landlords to circumvent retaliation laws and let habitability concerns persist within a unit.

Many states and localities that have adopted stronger habitability legislation have included in their laws specific language protecting renters against retaliatory and discriminatory behavior. The presence of such language gives tenants a sense of security in reporting housing code violations and allows habit-

ability concerns threatening the safety and well-being of residents to be rectified.

New Orleans's "Healthy Homes" law states explicitly that a landlord is legally prohibited from engaging in harassing behavior towards a tenant for reporting potential violations, thereby doubling down on existing anti-retaliation laws enacted at the state level. Under

New Orleans's law, a landlord or property owner is prohibited from unlawfully evicting a tenant, decreasing services, increasing the unit's rent or fees, or threatening a lawsuit against a tenant if a request for maintenance is submitted or if a housing code violation is reported to the agency tasked with overseeing the law.

Recommendation from Tenant Advocates

To ensure that habitability laws are enforced successfully, such laws should include provisions that:

- Ensure that tenants can assert an affirmative defense in court for withholding rental payments due to housing code violations and safety risks that have persisted after a tenant has asked for any infraction to be rectified.
- Add anti-retaliation protections for tenants who report a housing code violation. Doing so will not only provide tenants with a sense of security in asking for repairs but also ensure that landlords cannot evict a tenant arbitrarily, discriminatorily, or without cause.
- Include rental registries as enforcement and transparency mechanisms.
- Define the consequences that can arise from a failure to comply with the law. These consequences can include financial, civil, and criminal penalties, as well as the revocation of a landlord's rental certificate or license.
- Offer monetary or relocation assistance to tenants who are displaced due
 to habitability concerns to ensure that tenants can secure suitable housing.
 For tenants who are displaced due to a habitability concern, monetary assistance
 can be provided in the form of assistance with moving fees or the full return of
 a tenant's security deposit.

Complementary Policies

While habitability laws provide a baseline for ensuring safe and quality homes for all renters, they are often implemented through complaint-based systems in which tenants must report violations as they occur. Renters may lack knowledge of existing laws or be fearful to report violations, and, on their own, such laws may not be applied equitably to all renters. To support implementation, these laws can be strengthened through complementary legislation and programs, like rent registries and proactive inspection processes, lead abatement policies, just cause eviction protections and anti-retaliation protections, and right to counsel measures.

RENTAL REGISTRIES AND PROACTIVE INSPECTION PROCESSES

State and local rental registries and proactive inspection processes shift the burden of identifying and reporting habitability issues from tenants to landlords and state and local administrators. Though rental registries and proactive rental inspection processes have been embedded as provisions in laws that strengthen habitability standards, as exemplified by existing laws in New Orleans, LA, and Cincinnati, OH, the enactment of such laws can strengthen habitability laws and code enforcement processes by not only increasing transparency in the rental market but ensuring there are checks in place to rectify a habitability concern when it arises.

A rental registry is a database of rental properties in a given jurisdiction that collects information about each rental property. The database may include information on the property owner and their contact information, contact information for key individuals involved with the management and maintenance of the property, the current rents at a given property, and information related to the property's last inspection. Proactive inspection processes ensure that all units within a housing market are inspected on a regular basis to ensure compliance with local health and safety codes and laws.

Both rental registries and proactive inspection processes put the onus of reporting housing code violations on the state or municipality rather than the tenant. This can increase compliance – by ensuring that a locality's rental housing stock is maintained and that residents live in healthy conditions – and reduce the opportunity for landlord retaliation and retaliatory rent increases or evictions.²⁷

LEAD ABATEMENT POLICIES

Lead-based paint is often found in homes built before 1978 and can be detrimental to health, especially that of young children.²⁸ Some states and localities have interpreted housing code clauses requiring landlords to prevent the deterioration of buildings as applying to paint. Many others have passed specific lead abatement laws to require lead testing, lead inspections, elimination of lead

hazards, and homebuyer and renter education. Examples of states with lead abatement policies include Rhode Island, which allows tenants to file a petition with the district court to deposit rent in an escrow account if the lessor fails to address lead hazards in the property, and New Jersey, which requires a visual paint inspection at the time of lease turnover on all non-exempt rental property.

JUST CAUSE EVICTION PROTECTIONS

"Just cause" eviction laws can be used to ensure that tenants who raise a habitability issue with their landlord are not retaliated against. Such laws, also known also as "good cause" eviction laws, seek to prohibit landlords and property owners from evicting a tenant or refusing to renew a tenant's lease when the tenant is not at fault or in violation of any law.²⁹ When passed, just cause laws protect renters from being evicted arbitrarily, discriminatorily, or without valid reason. Instead, just cause laws establish a minimum set of allowable situations in which a landlord or property owner can evict a tenant, including nonpayment of rent or violation of a tenant's lease agreement. When passed, just cause eviction laws can constrain retaliatory behavior by providing tenants with the defense that they have been evicted without valid reason.

RIGHT TO COUNSEL

A tenant's right to legal counsel in eviction proceedings is an important tool for rectifying the power imbalance between landlords and tenants and ensuring that tenants facing unhealthy housing conditions are able to seek support through legal and enforceable means. When a tenant is guaranteed the right to counsel in legal proceedings, they are better positioned to raise as a defense that their unit is in substandard condition.

Right to counsel policies can be an effective tool in assisting tenants living with habitability concerns. A brief released jointly in 2024 by ChangeLab Solutions, Human Impact Partners, PolicyLink, National Coalition for a Civil Right to Counsel, and Results for America found that lawyers commissioned to represent tenants facing habitability issues were able to assist them in identifying housing code violations and asserting a legal claim about a landlord's responsibility to make necessary repairs to the unit.³⁰ A lawyer can also serve as a point of contact to negotiate with landlords and housing code enforcement officials to ensure that habitability concerns are addressed and properties are up to code.

Conclusion

Strengthening habitability laws helps ensure that tenants are able to live in dwellings fit for habitation and that they are free from the threat of discrimination, harassment, or retaliation. However, there are no federal laws or regulations that establish a minimum set of habitability standards for rental properties in the private rental market. And while all states and many jurisdictions have existing "implied warranties of habitability" written into law, passing updated or additional laws to strengthen state and local housing codes will guarantee that rental residences are free from health and safety hazards that negatively impact tenants, especially the lowest-income and most marginalized renters.

Lawmakers should consider passing laws that include a definition of 'habitability' that includes features both internal and external to the unit; a clear explanation of the roles and responsibilities of landlords, tenants, and state and local administrative entities; information about notices and timeframes for landlords to remedy violations; mechanisms for enforcing landlord compliance; and anti-retaliation protections for tenants. Additionally, lawmakers should complement such legislation with laws that establish rent registry and proactive inspection processes; lead abatement measures; just cause eviction standards and anti-retaliation provisions; and right to counsel.

Endnotes

- ¹ Taylor, L. (2018, June 07). <u>Housing and health: an overview of the literature</u>. Health Affairs Health Policy Brief, 10 (10.1377).
- ² Taylor, L. (2018, June 07). <u>Housing and health: an overview of the literature</u>. Health Affairs Health Policy Brief, 10 (10.1377).
- ³ United Health Foundation, American Public Health Foundation. (2020). <u>America's Health Rankings Annual Report</u> 2020.
- ⁴ Severe housing problems as defined in the United Health Foundation's America's Health Rankings Annual Report can include problems such as a lack of complete kitchen facilities or plumbing facilities. A severe housing problem can also refer to overcrowding or severe cost-burden among tenants for whom the lack of services negatively impacts health and safety.
- ⁵ United Health Foundation, American Public Health Foundation. (2020). <u>America's Health Rankings Annual Report 2020</u>. (p.17).
- ⁶ "Lead Hazards on Rental Property & Tenants' Legal Rights and Options." Justia.
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