

RESEARCH PROJECT MEMORANDUM

To: John J. Smith, Esq.
From: Paula Jones
Date: April 14, 2023
Re: "Implied Warranty of Habitability" to landlord Sam Jones

ISSUE STATEMENT

Whether the tenants may establish a breach of "implied warranty of habitability" against the landlord due to uninhabitable conditions where there is mold due to water leakage, offensive odors, and an influx of rodents and roaches under Tennessee law.

TYPE OF LAW

This is a civil case involving a landlord-tenant dispute.

SCOPE OF LAW

This a state issue. Tennessee has a Landlord maintenance statute.

SEARCH TERMS AND PHRASES

1. advanced: (tenants landlords apartments)
2. lease tenants
3. advanced: (tenant & landlord & lease) & "uninhabitable"
4. Statutory warranty of habitability in Tennessee
5. advanced: ("implied warranty #of habitability")
6. advanced: "constructive eviction"

SECONDARY SOURCES

[x] Encyclopedia

- 43 Am. Jur. Proof of Facts 3d 329 Landlord's Liability for Breach of Implied Warranty of Habitability §§ 2, 7, 9-10, 12 (Originally published in 1997). Gives an overview of tenant's remedies, the establishment of the uninhabitable condition, notice requirement, evidence requirements, and says water leakage is a basis for a tenant's assertion of a claim for the breach.

[x] Other

- Mark S. Dennison, Cause of Action for Breach of Implied Warranty of Habitability in Residential Lease, 25 COA 2d 493 (Originally published in 2004). This source was helpful because it explained the history behind the law of independent lease covenants and the doctrine of caveat emptor. Also, I was able to understand why the modern-day recognition of implied warranty of habitability is in every residential lease. This provides tenants with the means to hold their landlords responsible for maintaining the leased premises in fit and habitable condition.

PRIMARY SOURCES

[x] State Statutes

Tenn. Code Ann. § 66-28-304 (West, Westlaw through 2023 Reg. Sess.). This is Tennessee's Landlord maintenance statute which includes keeping the premises in a fit and habitable condition.

[x] State Court Cases

Hays v. Gilliam, 655 S.W.2d 158 (Tenn. Ct. App. 1983). A law suit was brought claiming a breach of implied warranty of habitability had occurred in the sale of a building containing six one-bedroom apartments. The Tennessee Court of Appeals reversed the decision made by the Chancellor in Chancery Court finding that a breach of implied warranty of habitability did not exist with respect to the sale.

Zack Cheek Builders, Inc. v. McLeod, 597 S.W.2d 888 (Tenn. 1980). This case is informative because of the nature of the suit (when heavy rainfall caused piles of soil to damage a home) and the giving of information whether Tennessee is a jurisdiction that recognizes an implied warranty of habitability. Tennessee is not among those jurisdictions that do.

[x] Other Court Cases

Johnson v. Scandia Assoc., Inc., 717 N.E.2d 24 (Ind. 1999). This case is persuasive because it deals with warranty of habitability in a landlord-tenant relationship.

UPDATE

[x] Westlaw Keycite

All sources have been updated using KeyCite.

CONCLUSION

Tennessee is a jurisdiction that does not implicitly adopt an implied warranty of habitability rule recognized by the courts. However, Tennessee has a statute that requires landlords “[to] make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition” Tenn. Code Ann. § 66-28-304(a)(2) (West, Westlaw through 2023 Reg. Sess.). Therefore, the tenants could get a remedy for the problem by making a case that their conditions were not habitable under Tennessee law arguing that the facts of their case meet the conditions to establish a breach of implied warranty of habitability based on persuasive authority from other states.

It is clear that the facts of the tenant’s case which are water leakage, faulty plumbing, and insect and rodent infestation do meet the conditions that render the premises unfit for human habitation. Although there is no implied warranty, the lease does require the landlord to keep a condition suitable for living purposes. Since the landlord has not done this, the tenants have the option of giving notice to the landlord of defects in the premises, and if the landlord fails to remedy them, the tenants themselves may do so and deduct the reasonable cost of repair from the rent. Another alternative may be for the tenants to treat the condition as a constructive eviction and quit the leased premises without further liability for rent. Finally, the tenants may bring an action for abatement of rent during any period of uninhabitability.