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Tenant's Attorney: Evaluation of Impact

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TENANT'S ATTORNEY: EVALUATION OF IMPACT

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The natural question raised by the passage of "Tenant Rights" legislation is whether the new law helps or hinders the practicing attorney representing tenants. In analyzing the package of Tenant Rights Bills enacted in Michigan in 1968[1] this article will focus on three questions:

1) whether such legislation raises false hopes in being heralded as a major declaration of rights and an effort to solve the problem of housing shortage;[2]
2) whether such legislation actually further oppresses tenants, especially in their exercise of the one effective instrument in their power: collective action; and
3) whether such legislation significantly changes the relationship and the power of tenants in public housing *viz-a-viz* project housing management.

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[1] The following are catch lines for classifying the particular bills:
a. House Bill No. 3397 — Just cause for eviction from public housing;
b. House Bill No. 3188 — City Health Inspection, Certificate of Compliance, and Receivorship;
c. House Bill No. 3396 — Public Housing Tenants' Boards;
d. House Bill No. 3384 — Eviction procedure and bond;
e. House Bill No. 3395 — Covenants implied into the lease or license.

[2] The term "housing shortage" is used because it best outlines the crucial problem. Generally, there is insufficient housing in this state and for that matter in the country, because we have refused to allocate a sufficient percentage of our natural resources to this problem. As a result, we do not have a sufficient supply for anyone (even in suburbia the supply is so low that people pay fantastic prices for housing that barely meets their needs). This leaves the poor with the oldest housing which in turn is overcrowded; by reason of the overcrowding, the housing depreciates at a much higher rate causing more shortage. The problem obviously cannot be solved simply by giving the tenants more rights in court.

I. The Goals of The Legislation: Reality or Fraud?

Any law reformer who harbored the illusion that a package of Tenant Rights Bills would help to solve the housing problem in Michigan must be considered naive. The legislation is neither intended nor strong enough to assault "slumlordism" frontally by significantly undercutting the traditional legal power of the landlord. When one considers the economic magnitude of the problem of inadequate housing and the resources this society commits to "planned waste" consumer goods and "aggressive wars," the conclusion is apparent: the legislation has so balanced legal gains and losses for the tenant that it barely touches the housing problem.

Most of the reformers who would acclaim the new laws believe that a more equitable balance of power between landlord and tenant has been achieved. If we compare the legal rights which the tenant has gained with those which he has lost, however, we must find it very questionable that a new balance now exists. As distinguished from the middle income tenant, the poor tenant particularly had more legal protection before enactment of the Tenant Rights Bills. The vigorous tenant's attorney may have been strengthened somewhat, but at the expense of the vigorous tenant's organizer. Attorneys for the poor were lacking before the new laws and still are lacking. Organizers were just beginning to demonstrate the possibilities in that most powerful instrument of the poor tenants, collective action; now they face greater obstacles.

The problem which is most fundamental in securing a new way of life for the oppressed in our society is redistribution of wealth and power. The poor tenant would have been much better served had the new legislation strengthened his capacities to carry on the collective struggle rather than his capacities to carry on individual court action. The poor tenant needs to be able to control the property on which he lives, not simply protect himself from a landlord's control.

II. Position of The Tenant Under Prior Law

Before the new law the poor tenant possessed several legal advantages. First, the landlord was prohibited from operating without a certificate of compliance.[3] Second, the eviction proceeding brought by a landlord could not result in a money judgment, for which a completely separate action had to be brought. Such a judgment for a slumlord could be barred if it could be established that he had never obtained and was not entitled to a certificate of compliance. Third, the tenant had an absolute right to a jury trial[4] for questions of both law and fact.[5] This constituted a valuable

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[3] MICH. COMP. LAWS §§125.499 to 125.502 (1967). *See also* Barsky v. Litwin, 289 Mich. 672, 287 N.W. 339 (1939); Ravet v. Garelick, 221 Mich. 70, 190 N.W. 637 (1922).

[4] MICH. COMP. LAWS §600.5622 (1963).

[5] Hart v. Lindley, 50 Mich. 20, 14 N.W. 682 (1883).

means for exerting pressure. It provided the possibility that a large number of tenants demanding a jury trial could force the landlord to negotiate.

The poor tenant was most harshly obstructed in appeal, which required posting of a cash bond equal to nine times the amount of the rent.[6] However, to the extent that collective organization helped to provide legal services, it was possible to attack this bond requirement in order to prolong litigation and delay enforcement of any eviction judgment. Two important issues which could be raised were the constitutionality of the bond[7] and waiver of bond under MCL §600.2605 (1967).

Yet the Commissioner's Courts have been eviction factories. The reasons for this are primarily two: a) the legal profession has promoted a double standard of procedural justice; and b) governmental enforcement authorities have been paralyzed either by political pressures, or by their own indifference, or by the very stark nature of the economic alternatives to eviction resulting from condemnation of housing.

The double standard in the profession leaps out at any practicing attorney who merely takes the time to observe. On the one hand, it is a generally accepted tactic for defense lawyers representing insurance companies or major corporations to use docket delay as leverage to obtain lower settlements. An injured person must live in complete poverty while he waits for the courts to award him his just due for the disability caused by some tortfeasor or a company in a workman's compensation case. Yet, on the other hand, when a tenant's attorney attempts to use docket delay to obtain leverage for his client, the court reacts sharply. As an illustration, I requested in 1967 the right to submit briefs on the question of the jurisdictional power of the Muskegon County Circuit Court Commissioner to evict one hundred and thirty-five families by summary proceeding. The judge ruled that briefs were unnecessary and would only delay his decision. In 1968 a Muskegon County Circuit Court judge advanced all eviction actions on a crowded docket past those of injured claimants who were waiting sometimes years to secure compensation.

The role of government enforcement of environmental housing codes has been equally negative. The reasons are as simple as they are obvious. Unquestionably graft seriously undermines the objectivity with which government agents enforce relevant codes. Where pay-offs are ineffective, political pressure serves to support the position of influential groups of slum property holders. Even when no influence is applied, the inadequacy of an indifferent "public servant" on occasion makes for equally ineffective enforcement. The scrupulous and dedicated inspector also faces a dilemma which often paralyzes government intervention: the harsh alternative between condemnation of housing when nothing else is available and failure to uphold the minimum standards of habital housing.

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[6] MICH. COMP. LAWS §600.5670(2) (1967).

[7] Keyishian v. Board of Regents, 385 U.S. 589 (1967); Dombrowski v. Pfister, 380 U.S. 479 (1965).

III. Impact of The New Law

The Tenant Rights package has strengthened the power of the landlord in several ways: 1) by taking away the tenant's absolute right to a jury trial;[8] 2) by denying the absolute defense to a money judgment where the tenant could establish the landlord had no valid certificate of compliance;[9] 3) by granting a new defense to the landlord that damage or substandard conditions were caused by the tenant;[10] 4) by forcing any group of tenants acting collectively to pay their money into courts which for years have been totally landlord oriented;[11] 5) and most important, by giving those same courts the power to issue money judgments.[12]

The package also provides a number of legal gains for the tenant, although almost without exception these strengthen the individual litigant rather than the collective entity: 1) certain new defenses to summary possession actions are created;[13] 2) the bond requirements have been liberalized in that they may be set "reasonably" in the discretion of the bond officer;[14] 3) a provision for "receivership" has been added which would allow tenants themselves to be appointed receivers to direct correction of deficiencies in their housing.[15] In order to evaluate the impact of the new law we should examine the effect of each of these gains and losses in the tenant's legal position.

A. The Rent Strike Under New Conditions

Before passage of the new legislation a rent strike in Michigan found its strength in two factors: first, the tenants could accumulate large sums of money with no assured recovery by the landlord because such recovery was absolutely barred if the landlord had been operating without a certificate of compliance;[16] and second, the Commissioner could not issue a

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[8] House Bill No. 3384, §5637(5): "Upon proper motion for summary judgment on the pleadings, either party may obtain judgment on the claim for possession."

[9] House Bill No. 3188, §130(3): "The duty to pay rent in accordance with the terms of any lease or agreement or under the provisions of any statute shall be suspended and the suspended rentals shall be paid into an escrow account . . . during that period when the premises have not been issued a certificate of compliance, or when such certificate, once issued, has been suspended."

[10] *Id.* "Nor does this subsection apply where the owner establishes that the conditions which constitute a hazard to health or safety were caused by the occupant or occupants."

[11] House Bill No. 3188, §130(4) and (5).

[12] House Bill No. 3384, §5637(4): "A money judgment may be rendered in such action against any defendant over whom the court has personal jurisdiction."

[13] House Bill No. 3384, §5646(4), *see* text accompanying note 26, *infra.*

[14] House Bill No. 3384, §5670(2).

[15] House Bill No. 3188, §135(2): "When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint . . . any competent person as receiver."

[16] MICH. COMP. LAWS §125.500 (1967).

money judgment. The legal expense for the landlord facing numerous tenants on strike would be considerable because every tenant was guaranteed a jury trial. The new law allows the eviction judge to act by summary judgment avoiding a lengthy jury trial.[17] The landlord may now seek a *money* judgment in this *same* summary proceeding without showing that he is operating under a certificate of compliance.[18] Previously obligated to comply absolutely with the housing codes, the landlord now is permitted reasonable time to comply before tenants may take action.[19] A violation even then is only offset against rent due.[20]

The new statute sets a very rigid procedure for the tenants to follow before they can carry out a rent strike; it attempts to establish one way to run a rent strike and eliminate all others. For instance, some will argue that under the new law tenants may not organize action against a landlord to put him out of business for the purpose of eliminating a racist or profit-maximizing overlord. As organizational difficulties in mobilizing a large group of poor people are of considerable magnitude in any case, tenant's organizers need maneuverability to determine the *time* and *reason* for striking, the *course* and *priority of goals* in negotiations. A successful tenants' organization must articulate as many of the tenant's complaints as possible and include all those complaints in its demand for settlement of the strike; in this way, more tenants are brought into the strike. A tenants' organization must generate as many leaders as possible; this will allow more ideas about why, how, and when the strike should occur. All this is impossible if the tenants only strike for repairs and strike only after the landlord has a "reasonable time to comply" with the housing code.[21]

An attorney for tenants must allow them to make the decisions and organize and control their own strike; the attorney's role is to develop ways to protect their action. If an organized action is mobilized and tenants begin paying rent money into an escrow account with the court, past experience suggests that any procedural misstep will result in forfeiture of

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[17] House Bill No. 3384, §5637 (5), *supra* note 8.

[18] *Id.*, §5637 (4), *supra* note 12.

[19] House Bill No. 3188, §130(3): "This subsection (payment of rent into an escrow account) does not apply until the owner has had a reasonable time after the effective date of this article or after notice of violation to make application for a temporary certificate. . . ."

[20] House Bill No. 3384, §5637(4): "A defendant against whom claim is made may file a counterclaim against the plaintiff by way of setoff or recoupment."

[21] The argument that tenants can now strike only to induce the landlord to make repairs to the premises would be based on the following interpretation of House Bill 3188, §§130(4) and (5): under subsection (5) tenants can avoid the possibility of summary judgment in an action for nonpayment of rent only if "rents . . . withheld are . . . paid into the escrow account." Subsection (4) provides that rent may be paid into such an account "to be paid thereafter to the . . . party authorized to make repairs, to defray the cost of correcting the violations." The tenants are given no express authority to pay rents into the escrow account for any other purposes.

the escrow money. In contrast, under the old law the tenants held the money during the strike and the uncertainties of ultimately obtaining this money often forced the landlord to negotiate. Thus the tenant's attorney must never allow the rent money to be paid into court. If he can keep the rent payments out of court, he will have a further advantage in that the statute does not provide for garnishment or other collection device; thus he may force the landlord to pursue his action in a court of general jurisdiction where the tenant's attorney may be able to preclude automatic enforcement of the Commissioner's decision. In addition he may have leverage to oppose summary judgment by arguing that many fact issues for a jury are raised by the statutorily implied covenants which may constitute a defense for nonpayment of rent.[22] Furthermore, the claim for money may be removed to a more sympathetic court simply by asserting a counterclaim in excess of $5000,[23] usually an easy condition to meet.[24]

B. Defenses to Termination of Tenancy

The present statute has accomplished something of substantial value for individual tenants in establishing defenses to the action for possession based on a termination of tenancy. This action is generally brought against the individual tenant who is trying to act alone, often against the small landlord. Therefore these defenses will benefit chiefly individual tenants rather than tenants engaged in collective activity. There may be situations, however, in which a termination of tenancy action is brought in a rent strike. In Muskegon, for example, where twenty-five families struck against a private landlord, he elected to sue for termination rather than for non-payment of rent.

The fact that this termination action requires at least thirty days notice is an important advantage.[25] The most significant strengthening of the tenant, however, is provided by the availability of affirmative defenses which replace the previous limitation to a guilty or not guilty plea by the tenant:

> When proceedings commenced under this chapter are to regain possession of the premises following the alleged termination of a tenancy, if the defendant alleges in a responsive pleading and if it appears by a preponderance of the evi-

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[22] House Bill No. 3395; *see also* Ravet v. Garelick, *supra* note 3.

[23] House Bill No. 3384, §5637(4): "If the claim for money or counterclaim exceeds the jurisdiction of the court, the court shall hear the claim for possession but shall dismiss the claim for money and counterclaim without prejudice to subsequent action thereon."

[24] *See* Sax and Heistand, *Slumlordism as a Tort*, 65 MICH. L. REV. 869 (1967).

[25] MICH. COMP. LAWS §554.134 (1967).

> dence that any of the following situations exist, judgment shall be entered for the defendant:
>
> (a) *That the alleged termination was intended as a penalty for the defendant's attempt to secure or enforce rights under a lease or contract,* or under the laws of the state or its governmental subdivisions, or of the United States.
>
> (b) That the alleged termination was intended as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of any health or safety code or ordinance.
>
> (c) That the alleged termination was intended as retribution for any other lawful act arising out of the tenancy.
>
> (d) That the alleged termination was of a tenancy in housing operated by a city, village, township or other unit of local government, and was terminated without cause. [Emphasis added].[26]

Arbitrary action by the landlord in fact strengthens the position of a tenant organizer among tenants. Such action will be curtailed considerably by the threat of these new defenses. To the extent that these new defenses improve the legal position of the collective tenant, they are most helpful in protecting the tenant organizer who may claim that in reporting code violations he is attempting "to secure or enforce" rights under a lease or a contract. A tenant who is attempting to organize to relieve the tenants from exposure to danger or who wants to bring about a collective bargaining agreement is attempting "to secure rights" under a contract and is therefore exempt from arbitrary eviction.[27] The availability of broad defenses to an action for a termination of tenancy suggests that the landlord will now rely on actions for nonpayment of rent.

C. Bond Provisions

The provision requiring a bond equal to nine times the amount of the rent has now been repealed. This might be considered a substantial victory for tenants except for the problems presented by the following language:

> (1) Either party conceiving himself aggrieved by the judgment of the officer

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[26] House Bill No. 3384, §5646(4).

[27] *See* Edwards v. Habib, 227 A.2d 368 (D.C. Cir. Ct. 1968).

> under this chapter may appeal therefrom to the circuit court of the same county, in accordance with the court rules.
>
> (2) A bond shall be required for the appeal with a penalty to be fixed *at a reasonable amount* by the officer. If the appellant is unable to obtain sureties or make a cash deposit in lieu thereof, he may have the bond without sureties or cash deposit *upon such reasonable conditions as the officer may determine.* [Emphasis added][28]

Repeal of the old law clearly implies that a bond requiring nine times the monthly rent is not a reasonable bond; however the counter-argument is that the legislature merely wanted to give judges discretion. If a judge is able to impose a bond of $5,000.00 or more for misdemeanors in cases involving riot victims and conscientious objectors,[29] he will be capable of imposing a heavy bond when faced with a large and politically unpopular rent strike. Since subsection (3) requires the defendant to pay the accrued rent if he loses,[30] a reasonable bond should never exceed the rent that is due at the time of the appeal; such a bond totally protects the landlord.

Tenants should be advised to obtain sureties rather than make a cash deposit, if the amount of the bond is not excessive. The tenant needs only two sureties, who may be friends. If the tenant produces the necessary sureties, it is then the duty of the landlord to object. If he does, two other sureties can be produced. The eviction judge can impose conditions on the appeal only if the tenant fails to produce the sureties. Tenants should avoid a situation where the judge has the power to impose conditions on the appeal, because generally that will allow the judge to require promises: 1) that the escrow fund is not dissipated; or 2) that the escrow fund be paid into court; or 3) that the tenants reveal all action which affects the fund, or the amount of the fund including those who have paid up accounts and those who do not. Hopefully, judges will make a good faith effort to assess the defendant's ability to pay the bond and set it accordingly.

The bond provision probably is the most important aspect of the bills as far as private tenants are concerned. Lawyers representing tenants will have to do considerable research in all areas which relate to bond requirements, both criminal and civil. Criminal cases already have set some

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[28] House Bill No. 3384, §5670.

[29] *See* Comment, *The Administration of Justice in the Wake of the Detroit Civil Disorder of July 1967,* 66 MICH. L. REV. 1542 (1968).

[30] House Bill No. 3384, §5670(3): "The Bond shall be conditioned that the defendant will forthwith pay all rent due or to become due the plaintiff for the premises described in the complaint, or the rental value thereof, together with costs, if the plaintiff prevails."

guidelines for the method of fixing bond and for determining what is a reasonable bond. Civil cases will have to be developed so that a judge cannot use this bond provision for punishment or for imposing any arbitrary conditions. Even more important, a procedure must be established whereby the defendant can have a hearing on the bond which has been set and also can be given the chance to protest the amount of the bond as excessive without limiting the period of his appeal or in any way endangering his appeal rights. The statute does not provide any of these procedures; given the possibility of appeals, however, lawyers will have a chance to develop more equitable legal precedent.

D. Receivership

Evaluation of the efficacy of the receivership provision of this statute is difficult. It gives the court the power to appoint the tenant himself as receiver[31] but it is doubtful whether any court will have the courage to do so. The more crucial question concerns the present condition of the buildings; many of them have been allowed to degenerate for years while the slumlord derived maximum profits. It is doubtful whether even the most efficient receiver could readily change this fact. He could, however, eliminate all future profit and keep the houses on a maintenance basis. If the receivership program develops as a way for tenants to take over all slumhousing, then an important step will have been taken. From there a concerted effort may be made to obtain outside funds to rehabilitate the houses.

It should be noted that the statute fails to provide any discovery procedure whereby a tenant can find out the extent to which the landlord would be capable of rehabilitating the property if he were prohibited from sucking out future profits. Knowledge of the financial condition of the landlord and the value of the property is extremely important to the tenant before he takes any action to put the property in the hands of a receiver. Provision of such procedures may help to avoid many strikes where the tenants are attempting to obtain such information by force or attempting to accomplish the impossible in light of the landlord's financial condition.

IV. Public Housing

In stark contrast to the tattered and confused legal picture presented to the private tenant, the tenant in public housing can be definitely assured that his position *viz-a-viz* project housing management is substantially stronger than it was before the new bills. Public housing tenants generally face different problems than those faced by private tenants. The housing itself is superior to that provided the poor private tenant; health and safety hazards are less insuperable, though clearly present. Collective action is

[31] House Bill No. 3384, §135(2), *supra* note 15.

easier to organize. Tenants of public housing are probably one of the more politically sophisticated groups in our community. Information is readily disseminated; constant conversation develops a group whose experience as poor people makes them more acutely aware of their problems; and by their interchange of ideas they contribute more solutions which generally point toward the necessity of collective action. Nevertheless, arbitrary and unreasonable administration, their most pressing problem, remains unaffected by the statute. Every public housing tenant has suffered the frustrating encounter with some clerk stating "that's our policy," regardless of whether the tenant produces forty other tenants to whom the "policy" is never applied.

The public housing bill appears to be an attempt to develop procedures whereby tenants can question the decisions of government bureaucrats. It provides that "There is created a board of tenant affairs for each city, village, or township having a housing commission and operating 1 or more housing projects. . . ."[32] However, this provision is an intricately formulated fraud designed to give the pretense that tenants will be allowed a voice in the decisions that affect their living conditions, but carefully drawn so that all control remains in the hands of the mayor and the housing commission. Half of the members of the board will be appointed by the mayor in the same way as he appoints the housing commission. The remaining members "shall be selected from among the tenants occupying local housing projects on a proportional basis." One may question why only one half of the board consists of tenants since it was intended to be a *tenant's* advisory board. If a change were to be made, then the board should be composed entirely of tenants since the housing commission already consists of persons appointed by the mayor. The reason for this unusual membership is that someone wants to pretend that we have community participation even to the extent that the so-called "Tenants' Board" can veto the housing commission; but that same person understands that any veto power (the only real power of the Board) is exerciseable only by a majority of two-thirds. The mayor and the political power structure of the city can, therefore, completely control the Board and, at the same time, have a ready answer for dissidents who are demanding community participation. Skillfully used, the state bureaucrats and politicians have an effective weapon against community organizers. No organizer can readily demand a boycott of the elections for such an important position because such a stand could undermine his credibility in the very group he is trying to reach. On the other hand, if the good leaders get tied down in a battle where all the cards are stacked against them, then they will have wasted much time and once again hurt themselves in the eyes of the group they are trying to reach. It presents an age-old dilemma, but the decisions are no less agonizing. The statute has placed

[32] House Bill No. 3396, §49.

one more burden on the most important people in the poor community — the organizers.

Once organized, however, the tenants in public housing have more weapons to carry out a successful strike than ever before. The tenant has a right to a hearing on any decision to terminate his right of use and occupation.[33] The tenant must be given written notice of "any determination affecting his status,"[34] and more importantly, he can petition the board "for a hearing and review."[35] If the commission's decision is upheld by the board, then the commission may bring an action to regain possession of the premises at which the tenant has a right to a trial de novo.[36] Since half of the board is composed of tenants and only a simple majority is needed to uphold the rights of the tenant,[37] any housing administration will have great difficulty processing eviction actions on a mass-production basis.

If the commission attempts to by-pass the review board and sue directly in court for nonpayment of rent, which could be the basis for eviction during a rent strike, then the tenant can have that case dismissed because as a condition precedent to any eviction action the statute requires that the statutory procedure before the review board must be followed. This gives a tenants' organization at least one month and perhaps longer before any eviction action can be heard by a court.

The new legislation also provides:

> No tenancy or contract right to occupy housing in a project or facilities operated by any city, village, township, or other unit of local government, as provided by this act, shall be terminated by the project management or the local housing com-

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[33] House Bill No. 3396, §53(1)(b): "The tenant or applicant affected shall have a right to a hearing and review by the board where a determination is made by the project management or by the housing commission . . . [t]hat a tenant's right of use and occupation shall thereafter be terminated."

[34] House Bill No. 3396, §53(2).

[35] *Id.*

[36] House Bill No. 3396, §54: "If a decision to terminate a right of use and occupation is upheld by the board upon review, an action to regain possession of the premises shall not be brought thereafter until the right of use and possession has been terminated by lawful notice. If an action to regain possession of the premises is brought by the commission, the tenant shall have a right to a trial de novo on the issue of whether there was just cause to terminate his right of use and occupancy."

[37] This result is not clearly expressed in the statute. However, it seems to be a fair implication. Subsection 52(3) is the only specification of the vote which is required for a board decision and it is confined to an exercise of the veto power. On all other matters the statute is silent as to the vote required. Therefore the usual rule of construction should be applied with all other matters governed by a majority vote.

> mission *except for just cause.* [Emphasis added][38]

Since the "just cause" requirement by definition presents questions of fact, tenants in public housing should now have an absolute right to a jury trial.[39] Moreover, any breaches of the public leases will excuse the payment of rent and make legitimate the non-payment of rent or the payment of rent into escrow. To secure an appeal a "reasonable" bond must be provided. Tenants in public housing have strong arguments that reasonable for them means no bond. Since the federal government will allow only "indigents" to live in public housing projects, it is precluded from arguing that tenants in such projects are not indigent for the purpose of bonding unless the basis for the eviction is that the tenants have become ineligible to remain on grounds of higher income. Moreover, even if the government's own standards of indigency are disregarded and reasonableness is judged in terms of actual income, most tenants in public housing are in fact poor and still should qualify for an appeal without bond.

V. Conclusion

The essential question is whether this legislation actually protects "Tenant Rights." Much depends on the interpretation which is given to key provisions by the courts. That fact by itself is discouraging, but perhaps in light of the purposes of the statute, the judges will feel obligated to protect both sides.

The legislation at least provides the tenant an opportunity to have his case heard by some one other than the Circuit Court Commissioners. This means that the eviction judge will now have to be looking over his shoulder whenever he makes a decision and will be more accountable. If advocates for tenants appeal almost every case they lose, then we have not only the opportunity to live with the legislation but also the chance to create something which will protect tenants' rights through strengthening their own organized power.

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[38] House Bill No. 3397, §44(a)(1).

[39] The summary judgment procedure which is provided in House Bill No. 3384, §5637(5) and which would otherwise undermine the right to a jury trial is normally applicable only where no question of fact exists. *See* Munson v. County of Menominee, 371 Mich. 504, 124 N.W.2d 246 (1963); Davis v. Kramer Bros. Freight Line Inc., 361 Mich. 371, 105 N.W.2d 29 (1960); Chafee v. Stenger, 361 Mich. 57, 104 N.W.2d 805 (1960).