

**ANSWER TO QUESTION NO. 9**

In Michigan, landlords have a general duty to keep residential premises in a habitable condition. This is commonly known as the implied warranty of habitability, and represents a duty imposed on all residential leases. In every lease, the lessor covenants that "the premises and all common areas are fit for the use intended by the parties" and that he will "keep the premises in reasonable repair during the term of the lease or license, and [will] comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located." MCL 554.139.

These provisions generally require that the lessor provide premises that are reasonably suited for residential use, and is a change from the common law in which no general duty to provide habitable property existed. See generally, *Allison v AEW Capital Management LLP*, 481 Mich 419, 440-442 (2008) (Corrigan, J., concurring). Generally speaking, where the lessor breaches the warranty, a tenant may move out and terminate the lease, or may stay and sue for damages.

In the face of Michael's failure to take corrective action, the presence of substantial mold in a leased estate represents a serious health hazard that likely renders the estate untenable or unfit for occupancy. Michael's outright refusal to correct this problem caused him to be in breach of the implied warranty of habitability. Indeed, the facts specifically note that the mold caused Julie to become sick and forced Nick to seek residence elsewhere during at least part of the relevant time period.

**Michael v Julie:** Where premises are rendered untenable, Michigan statutory law provides that a lessee or occupant may "quit and surrender possession of the building, and of the land so injured, destroyed, or rendered untenable or unfit for occupancy." MCL 554.201. A lessee who does so is "not liable to pay to the lessor or owner rent for the time subsequent to the surrender." MCL 554.201.

In this case, the presence of mold represented a serious health hazard in violation of local housing law and thus likely rendered Julie's apartment untenable, particularly in light of Michael's refusal to rectify the problem. Because Michael breached the warranty of habitability, Julie therefore had the right to leave her apartment and surrender possession back to Michael. Furthermore, she is not liable for rent that would have been due after the time of surrender. Thus, Michael's action against Julie

alleging breach of their housing contract and claiming damages for unpaid rent should likely fail.

**Michael v Nick:** Nick's situation is slightly different from Julie's because, although he also had the right to terminate his lease and leave the premises, he decided to stay, withhold rent until Michael made the premises habitable, and notified health officials who could force Michael to take the necessary corrective measures.

The enactment of the comprehensive statutory scheme governing landlord-tenant law has been held to impose mutuality between the tenant's duty to pay rent and the landlord's duty to maintain the premises in habitable condition. A tenant is therefore allowed under this scheme to withhold rent payments when a landlord fails in this duty. *Rome v Walker*, 38 Mich App 458 (1972). Nick's withholding of rent for the time period in which it took Michael to return his apartment to a habitable condition thus does not provide legal grounds for eviction.

More important to this question, however, is the recognition that this fact pattern raises an issue of retaliatory eviction. In an action by a landlord to recover possession of realty, Michigan law provides to the tenant the defense of retaliatory eviction. MCL 600.5720. Statutory law specifically provides the situations in which the defense may be raised, including where the termination is intended as a penalty for a tenant's attempt to secure or enforce rights under the lease or the law, or where the termination is intended as a penalty for the tenant's "complaint to a governmental authority with a report of [the landlord's] violation of a health or safety code or ordinance." MCL 600.5720(1)(a), (b); see also *Frenchtown Villa v Meadors*, 117 Mich App 683 (1982).

Moreover, there exists a rebuttable presumption in favor of the defense of retaliatory eviction if the tenant shows that, within 90 days before the commencement of summary proceedings seeking eviction, he attempted to secure or enforce rights against the landlord or to complain against the landlord by action in a court or through a governmental agency. A landlord may rebut the presumption if he establishes by a preponderance of the evidence that the termination was not in retaliation for such acts. MCL 600.5720(2).

Since Nick wishes to remain in possession of his apartment during the fixed period of his remaining tenancy, he can raise the defense of retaliatory eviction in the eviction proceedings. Nick successfully complained to a local health authority regarding Michael's refusal to correct a serious health condition on the

premises, thereby enforcing his rights under state law and local housing code. Moreover, the fact that Nick did so within 90 days prior to the eviction proceeding will allow him to take advantage of the presumption that the attempted termination of the tenancy was a penalty, retribution, or otherwise in retaliation for Nick's decision to exercise his rights. As noted above, Nick's refusal to pay rent during the time in which Michael was in breach of his duty of habitability was a lawful action. And although Michael also alleges that several other residents have complained that Nick throws loud parties, Michael will have to establish by a preponderance of the evidence that this is the actual, good faith reason that Michael is seeking to terminate Nick's tenancy. Because those claims appear from the facts to be largely unsubstantiated, it is likely that Nick will prevail.