

RIGHTS OF TENANTS IN LEAD POISONING CASES

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In many cases involving a lead poisoned child, a dispute arises between the landlord and the tenants of the rented premises when it is learned that the rented premises was the source of the lead poisoning. These disputes arise for a number of reasons, including the tenant withholding rent payments and the landlord refusing to repair the lead hazards. Landlords frequently attempt to evict tenants under these circumstances, but it is the tenant who has the law on his side in many instances.

Under Michigan law, a landlord cannot institute eviction proceedings if the intent is "primarily as a penalty for the [tenant's] attempt to secure or enforce rights under the lease agreement under the laws of the state." This extends to situations in which the tenant complains to a governmental entity regarding a health or safety code, including complaints to local health departments regarding elevated lead levels in children. In these cases, there are often violations of state or local safety codes due to the hazards in the home.

Furthermore, in the case of Frenchtown Villa v. Meadors (1982), a landlord can not institute eviction proceedings in month to month lease situations if the tenant asserted a legal right against the landlord. Typically, in a month to month situation, the landlord can terminate the tenancy by simply giving 30 days notice to the tenant. However, the landlord cannot do this if the tenant has asserted a claim or attempted to enforce their rights regarding a health or safety code.

However, this protection does not extend to situations when there is an attempt to evict the tenant at the end of a fixed-term lease. This would apply to situations in which there is a definite termination date in the lease. For example, if a tenant signed a one-year lease on January 1, 1998 that would expire on December 31, 1999, the Landlord could elect not to renew the lease if a lead poisoning claim was made during the term of the lease. This would not be in violation of the statute or considered a retaliatory discharge. While it is not clear under Michigan law, if the year lease expired and became a month to month lease, it is possible that that the provision against evictions in month to month leases, previously mentioned, would apply.

Finally, a tenant may be excused from paying rent when the Landlord fails to repair the premises and to comply with safety and health laws. Under Michigan law, tenants may raise this defense to justify the withholding of rent. Rome v. Walker, 39 Mich. App. 458 (1972). In this situation, the tenant should place the rent in escrow with a bank to establish good faith on behalf of the tenant.

Disputes often arise in Landlord-tenant relations that require legal assistance. Attached is a list of some organizations that may be able to assist you and answer any questions.