

*Repealed by
9394-58*

AN ORDINANCE ESTABLISHING REMEDIES
FOR LANDLORDS AND TENANTS FOR CODE
VIOLATIONS OF THE CITY OF URBANA

Section 1. Purpose and Declaration of Policy.

It is the purpose of this ordinance and the policy of the City of Urbana, in order to protect and promote the public health, safety and welfare of the citizens in the City, to establish certain rights and obligations of the landlord and the tenant in the rental of dwelling units in order to encourage both the landlord and the tenant to maintain and improve the quality of housing in accordance with applicable housing codes of the City of Urbana.

Section 2. Scope.

This ordinance applies to, regulates, and determines certain rights, obligations, and remedies under a rental agreement for a dwelling unit located within the City of Urbana. Unless created to avoid the application of this ordinance, however, the following arrangements are not governed by this ordinance:

A. Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

B. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his/her interest.

C. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

D. Transient occupancy in a hotel, or motel, tourist homes or tourist courts.

E. Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

F. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

Section 3. Application.

The landlord and tenant may include in a rental agreement any terms and conditions not in conflict with this ordinance or any other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties, and nothing contained herein shall likewise be deemed to waive or to forego the rights, obligations, or remedies of any party as otherwise established by law or other applicable codes of the City of Urbana.

Section 4. Definitions.

The following words and phrases when used in this ordinance shall, for the purpose of this ordinance, have the meanings respectively ascribed to them in this ordinance, except where the context otherwise requires. Whenever any words and phrases used herein are not defined herein but are defined in the Minimum Housing Code of the City of Urbana, any such definition therein shall be deemed to apply to such words and phrases used herein except when the context otherwise requires.

A. "Essential Services" means water, heat, hot water, gas, electricity, and sanitation and cooking facilities as required to be maintained by the Minimum Housing Code of the City of Urbana.

B. "Firm Certificate of Insurance" shall mean a certificate issued by an insurance carrier which shall impose an unconditional duty upon the carrier to notify landlord not less than ten (10) days prior to the cancellation or termination of the coverage specified therein.

C. "Good faith" means honesty in fact in the conduct of the transaction concerned.

D. "Housing code" includes any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

E. "Landlord" means the owner, lessor or, except as provided in Section 6(C) of this ordinance, a sublessor of the dwelling unit or the building of which it is a part. An owner is one or more persons, jointly, severally or in common, or any organization, in whom is vested all or part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment

of the premises, including a mortgagee in possession. A "landlord" shall also mean a manager of the premises who fails to disclose as required by Section 6(B) of this ordinance. As used herein, an organization shall include a corporation, government, governmental subdivision or agency, trust, estate, partnership, association or any other legal or commercial entity.

F. "Rent" means all payments to be made to the landlord under the rental agreement.

G. "Rental Agreement" means all agreements, written or oral, and valid rules and regulations embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

H. "Tenant" means a person or an organization entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Section 5. Obligation of Good Faith.

Every duty under this ordinance and every act which must be performed as a condition precedent to the exercise of a right or remedy under this ordinance imposes an obligation of good faith in its performance or enforcement.

Section 6. Landlord to Maintain Fit Premises.

A. The landlord of residential premises shall maintain the premises in compliance with the applicable housing codes of the City of Urbana and shall promptly make any and all necessary repairs to fulfill that obligation in accordance therewith, provided, however, that the tenant may knowingly and intentionally elect and agree to repair said premises to bring them into conformity with the applicable housing codes of the City of Urbana. The burden shall be on the landlord to establish a knowing and intentional election on the part of the tenant to repair said premises in compliance with the applicable housing code. A mere recital in a form lease that tenant has covenanted to repair will not be sufficient, it being the intention of this ordinance that any agreement with the tenant to repair be bargained for in fact. A separate hand-written paragraph in the lease showing: 1) that the tenant has been informed of this ordinance and the existing code violations, 2) that he/she has affirmatively elected and bargained to repair the violations listed and other items listed and 3) that

the inducement for said arrangements, will be prima facie evidence that said provision was entered into in good faith and was bargained for in fact.

B. Before a tenant initially enters into or renews a rental agreement for a dwelling unit, the landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing any housing code violations which have been cited by the Building Official and which remain uncorrected for that dwelling unit and the common area of the premises.

C. Unless otherwise agreed, a residential tenant of a single dwelling unit who assigns or subleases shall not be liable to his/her assignee or subtenant for the performance of the landlord's obligations under the rental agreement or this ordinance.

Section 7. Tenant's Remedies.

A.(1) If a landlord fails to disclose to the tenant in writing any housing code violations as required by Section 6(B) above, or to correct any condition constituting a subsequently cited housing code violation within the time specified in a duly served notice to correct such cited housing code violation by the Building Official of the City of Urbana, the tenant affected by the condition may notify the landlord in writing of the tenant's intention to correct the condition at the landlord's expense. If the landlord, after receipt of such notice by the tenant, fails to correct the condition within the time specified for the performance of any act required by the notice of the Building Official or any duly granted extension thereof, the tenant, after first obtaining a contractor's firm certificate of insurance from the qualified appropriate tradesman who is to perform the work and after furnishing such certificate to the landlord in the case of any work to be done on the premises, may have the work done in a competent manner and, after submitting to the landlord a paid itemized invoice and, where applicable, a properly completed waiver of lien, may deduct from his or her rent the amount thereof, not exceeding the limits specified in subsection B(2) of this section.

(2) If the cited housing code violation is one involving essential services as herein defined which a landlord fails to supply contrary to the rental agreement, or if such violation is one giving rise to a hazardous condition which materially and immediately affects

health and safety, the tenant affected by the condition may, in the alternative to the remedy set forth above, notify the landlord in writing of the tenant's intention to alleviate the effects of such condition by any one (1) or more of the following courses of action:

(a) If the landlord, after receipt of such notice by the tenant, fails to provide such essential service or to correct the hazardous condition within the time specified for the performance of any act required by the notice of the Building Official or any duly granted extension thereof, the tenant may:

(i) Procure, if practicable, reasonable amounts of heat, hot water, running water, electricity, gas or other essential service during the period of the landlord's noncompliance and deduct the actual and reasonable cost thereof from the rent.

(ii) Procure, if practicable, reasonable and comparable substitute housing during the period of the landlord's noncompliance, in which case the tenant shall be excused from paying rent for the period of the landlord's noncompliance.

(b) If the landlord, after receipt of such notice by the tenant, fails to provide such essential service or to correct the hazardous condition within fifteen (15) days after the landlord is duly served with notice to correct such a housing code violation by the Building Official, or if any such similar uncorrected condition or interruption for any significant period recurs more than three (3) times in any twelve (12) month period, the tenant may vacate the premises and terminate the rental agreement. If any tenant rightfully vacates under this subsection, such tenant may recover from the landlord all rent payments not applied to rent accrued prior to the termination of the rental agreement and all damage or security deposits not rightfully applied to damages to the rental premises.

B.(1) No tenant may rely upon any provision of this section if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or

another person on the premises with the tenant's consent. In addition, no tenant may rely upon any provision of this section for the failure of a landlord to provide essential services as required under subsection A(2) above if the lack of any essential service is caused by:

(a) the impossibility of providing such essential service due to conditions designated as disasters by the Governor of the State of Illinois or the President of the United States, or

(b) the failure of the tenant to pay for such essential service when required to do so under the terms of the rental agreement, or

(c) conditions beyond the landlord's control, such as strikes, lockouts, and unavailability of essential utilities, materials or supplies.

B.(2) The provisions of this section may not be used by any one or more tenants or succeeding tenants to the same dwelling unit under any rental agreement more than three (3) times during any twelve (12) month period nor may the combined total dollar amount so deducted or excused during any such period exceed one (1) month's rent.

C.(1) Rights of a tenant under this section do not arise until such tenant has given and the landlord receives required notices. In the case of a failure to supply essential services or the existence of a hazardous condition, a one (1) day notice is required. For all other cases of cited code violations, a fifteen (15) day notice is required.

(2) A landlord "receives" a notice or notification by a tenant when said notice is:

(a) delivered in hand to the landlord or to any office employee of the landlord or if the landlord receives rent at home, to any person above the age of twelve (12) years residing in or in possession of the home, or

(b) mailed by registered or certified mail to the landlord at the place held out by the landlord as the place for receipt of the communication, or in the absence of such designation, to the landlord's last known place of residence or business.

D. Any amount of rent either so deducted by a tenant or for which a tenant is excused under this section shall become due and immediately payable to the landlord in any case where, upon a duly filed and heard appeal or request for a specific variation to the Minimum Housing Code Board of Appeals concerning the alleged housing code violation for which such deduction or excuse was made, such Board either reverses the notice, decision or determination by the Building Official or grants the request for specific variations in the application thereof.

E. Before correcting a condition affecting facilities serving more than one dwelling unit, the tenant so effecting the correction shall notify all other tenants sharing such facilities of those plans, and shall so arrange the work as to create the least practicable inconvenience to the other tenants. As used in this subsection, a tenant "notifies" any other tenant by taking steps reasonably calculated to inform the other tenants in ordinary course (such as posting such notice in a conspicuous place within the common areas), whether or not the other tenants actually come to know of it.

Section 8. Tenant to Maintain Fit Dwelling Unit.

A. The tenant of a dwelling unit shall maintain the premises in compliance with all obligations imposed upon tenants by the applicable housing codes of the City of Urbana and shall promptly act to fulfill that obligation in accordance therewith.

B. The tenant shall not cause the landlord to be cited with a housing code violation by deliberately or negligently destroying, defacing, damaging, impairing or removing any part of the premises, or knowingly permit any other person to do so. The tenant shall be responsible to the landlord for housing code violations caused by the acts and omissions of members of tenant's family who reside at the dwelling unit and of all persons on the premises with the tenant's consent.

Section 9. Landlord's Remedies.

A.(1) If a tenant fails to correct any condition constituting a cited housing code violation as set forth in Section 8(A) above within the time specified in a duly served notice to correct such housing code violation by the Building Official of the City of Urbana,

the landlord affected by the condition may notify the tenant in writing of the landlord's intention to correct the condition at the tenant's expense. If the tenant, after receipt of such notice by the landlord, fails to correct the condition within the time specified for the performance of any act required by the notice of the Building Official or any duly granted extension thereof, the landlord or his or her agents may enter the dwelling unit and have the work done in a competent manner and submit to the tenant an itemized invoice for the actual cost and for reasonable charges for the landlord's service, payable on the next date periodic rent is due, or if the rental agreement has terminated, payable immediately.

(2) If a tenant, through his or her own actions or those of his or her invitees causes a landlord to be cited for a housing code violation by the Building Official of the City of Urbana, the landlord affected by the condition may notify the tenant in writing of the landlord's intention to correct the condition at the tenant's expense. The landlord or his or her agents may thereafter enter the dwelling unit and cause the work to be done in a competent manner and submit an itemized invoice for the actual costs and reasonable charges for the landlord's service as rent payable on the next date periodic rent is due, or if the rental agreement has terminated, payable immediately.

(3) If the tenant, through his or her own actions or those of his or her invitees, causes a landlord to be cited for any housing code violation:

- (i) more than three (3) times during any twelve (12) month period, or
- (ii) involving essential services, or
- (iii) giving rise to a condition which materially and immediately affects the health and safety of others residing in or having access to the premises,

the landlord cited for the condition may, in the alternative to the remedies set forth above, terminate the rental agreement and order the tenant to vacate the premises. When the tenant is ordered to vacate pursuant to this subsection, the landlord may recover all rent accrued prior to the termination of the rental agreement, and apply any damage or security deposit to damages to the rental premises.

B.(1) Rights of a landlord under this section do not arise until such landlord has given and the tenant receives required notice. In the case of a landlord being cited with a housing code violation or a failure to supply essential services or the existence of a hazardous condition, a one (1) day notice is required. For all other cases where the tenant is cited with a code violation, a fifteen (15) day notice is required.

(2) A tenant receives notification by a landlord when said notice is:

(a) delivered in hand to the tenant or any person above the age of twelve (12) years residing in or in possession of the dwelling unit, or

(b) mailed by registered or certified mail to the tenant at the dwelling unit which is the subject of the citation.

C. Any costs or charges added by a landlord in accordance with subsections A(1) or A(2) of this section shall become due and payable to the tenant in any case where, upon a duly filed and heard appeal or request for a specific variation to the Minimum Housing Code Board of Appeals concerning the alleged housing code violation for which such deduction or excuse was made, such Board either reverses the notice, decision or determination by the Building Official or grants the request for specific variations in the application thereof.

D. Before correcting a condition affecting facilities serving more than one dwelling unit, the landlord so effecting the correction shall notify all tenants of other dwelling units sharing such facilities of those plans, and shall so arrange the work as to create the least practicable inconvenience to the other tenants. As used in this subsection, a landlord "notifies" any other tenant by taking steps reasonably calculated to inform the other tenants in ordinary course (such as posting such notice in a conspicuous place within the common areas), whether or not the other tenants actually come to know of it.

Section 10. Exclusivity of Remedies.

The rights, obligations and remedies accorded to both landlords and tenants under this ordinance are exclusively civil in

nature and in no event shall the violation of any provision of this ordinance be deemed to constitute a violation punishable by a fine or penalty under this ordinance or Section 1.6 of the Urbana City Code, as amended.

Section 11. Severability.

If any provision or part of this ordinance or application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of those provisions or parts thereof to other persons not similarly situated or to other circumstances shall not be affected thereby.

This ordinance shall be effective upon its passage and approval and shall apply to rental agreements entered into or extended or renewed on and after that effective date.

This ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council on the 6th day of November, 1978.

PASSED by the City Council this 6th day of November, 1978.

Beverly Umbarger
Beverly Umbarger, Acting City Clerk

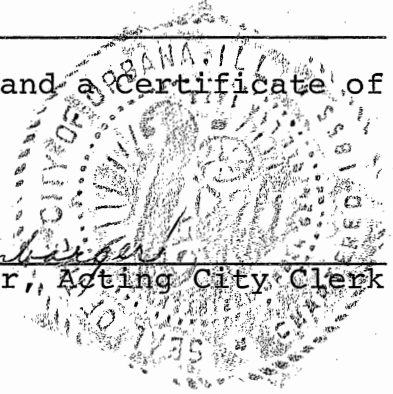
APPROVED by the Mayor this _____ day of _____, 1978.

Vetoed by Mayor - Veto was over-ruled by Council 11-20-78. Bu
Jeffrey T. Markland, Mayor

CERTIFICATE OF PUBLICATION

I, Beverly Umbarger, Acting City Clerk, City of Urbana, Illinois, do herewith certify that I caused the above Ordinance to be duly published in the C-U Courier on the 21st day of December, 1978, and a Certificate of Publication is attached hereto.

Beverly Umbarger
Beverly Umbarger, Acting City Clerk



COPY OF ADVERTISEMENT

28758

Certificate of Publication

STATE OF ILLINOIS }
Champaign County } ss.

CHAMPAIGN-URBANA COURIER, Inc., a corporation hereby certifies that it is the publisher of THE MORNING COURIER, a daily secular newspaper of general circulation in said County, printed in the City of Urbana, and published in the City of Urbana and in the City of Champaign, in said County and State, and that said newspaper is a newspaper as defined in "An Act to revise the law in relation to notices," approved February 13, 1874, as amended, and that the printed notice hereto annexed and hereby made a part of this certificate has been published in

said newspaper at least once each week for one successive weeks in each and every copy

and impression thereof; that the date of the first newspaper containing said publication was

Dec. 21, A.D. 1978, and that the date of the last newspaper containing said

publication was _____ A.D. 19____; and that _____

Barbara A. Rees by resolution of the Board of Directors of said CHAMPAIGN-URBANA COURIER, Inc., has been authorized to make this certificate.

IN TESTIMONY WHEREOF said CHAMPAIGN-URBANA COURIER, Inc., has caused this certificate to be executed in its name by said Barbara A. Rees

this 21st day of Dec. A.D. 1978.

CHAMPAIGN-URBANA COURIER, Inc.

Publication Fee, \$ 171.30

By *Barbara A. Rees*

CERTIFICATE OF PUBLICATION

in

THE MORNING COURIER

CHAMPAIGN AND URBANA, ILLINOIS

In the Matter of

Ordinance No. 7879-49

Solicitors or
Attorneys

City of ~~UR~~ Urbana
City Clerk

78R26964

STATE OF ILLINOIS }
CHAMPAIGN COUNTY } SS
Filed for record in the Recorder's Office
of said county.

DEC 20 1978 -9 25 AM

Recorded in Book 180
at Record on Page 883

Robert E. Martin
Recorder of Deeds

INDEXED

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