

Legal Alert: Claims/Defenses Which May Potentially Be Raised by Tenants in Light of the Coronavirus Pandemic

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As a result of the COVID-19 outbreak in New York, we believe tenants may look to assert a breach of warranty of habitability and/or constructive eviction claim when a resident or building employee tests positive for the virus. As this is uncharted territory, although we do not have any definitive answers to these questions, the following is our opinion and some practical advice:

The law provides for an implied warranty of habitability whereby the landlord is deemed to warrant that a tenant's apartment and the common areas of the building "are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety." Although there is little precedent to give us guidance as to what the courts will do when faced with a breach of warranty of habitability or constructive eviction claim based upon a case of coronavirus in your building, we feel the best way to defend against such claim will hinge on what steps were taken by the landlord to prevent the spread of COVID-19. The following are our recommendations:

1. Place hand sanitizer in conspicuous areas of the building where residents routinely touch things such as the area near mailboxes, in or near elevators, and front desks.
2. Place disinfectant wipes in laundry rooms, community rooms, trash compactor rooms, gyms and the like.
3. Post signs in a conspicuous place in such common area rooms directing residents to wipe down areas before and after touching anything in these rooms, ie. washer/dryer control panels; light switches; handles; door knobs; tables and chairs; etc.
4. Sanitize the common areas of the building as frequently as possible.
5. If a building employee is confirmed to be infected with coronavirus, without revealing the identity of the employee for privacy reasons, all tenants should be alerted of possible exposure.
6. Disseminate to the residents the steps you are taking to keep the building virus free, the protocols you have put in place and urging all residents to do their part.

We also recommend that you review a copy of the NYC Department of Health Coronavirus Disease General Disinfection Guide for Commercial or Residential Premises aka "NYC Guidance Memo" (link provided) and most particularly review the section entitled Guidance When Entering Tenant Homes. <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/disinfection-guidance-for-commercial-residential-covid19.pdf>

Although we cannot guarantee success in defeating a breach of warranty of habitability or constructive eviction claim, we urge you to employ whatever procedures you deem appropriate to keep the common areas of the building sanitized; keep the residents informed of what you are doing; and urge their cooperation. Documenting your policies and procedures is always a plus.

If you would like to discuss this issue further, feel free to contact any of our attorneys who will be happy to assist you.

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