Alleviating the Harms of Substandard Housing to Wisconsin Tenants: Correlating Rent with Assessed Property Value

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ALLEVIATING THE HARMs OF
SUBSTANDARD HOUSING TO WISCONSIN
TENANTS: CORRELATING RENT WITH
ASSESSED PROPERTY VALUE

Like other cities across the nation, Milwaukee utilizes a mix of regulatory,
statutory, and common law tools to address the problem of substandard rental
housing. This Comment examines the efficacy of those legal tools, in the
process demonstrating that existing remedies offer insufficient protections to
tenants in need of habitable housing. This Comment then proposes a novel
legal strategy that is designed to ameliorate the problem of low-quality,
overpriced rental housing: amending Wis. Stat. § 66.1015 to permit
implementation of a “rent-value correlation rate”—giving municipalities the
option to cap monthly contract rent as a percentage of the assessed property
value. Tenants could use the rent-value correlation rate as an affirmative
defense to eviction. And because tenants would finally owe a financial
obligation commensurate with the substandard quality of contracted housing,
landlords might be motivated to maintain or improve the quality of the premises
in order to restore or increase profit margins.

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I. INTRODUCTION

In a recent housing survey, as many as forty-four percent of Milwaukee renters reported living with “serious and lasting housing problem[s]” for more than three days, to include broken windows or appliances, mice, cockroaches, or rats.1 In 2015, almost 20,000 housing units in Milwaukee County were labeled “deficient” due to open cracks or holes, while another 1,100 units lacked complete plumbing.2 In 2020, a nonprofit housing organization reported that Milwaukee County has the highest rate of structural deficiencies within its housing stock in the state.3

Older, poorly maintained houses and apartment complexes are often riddled with mold and leaks, or suffering from structural deficiencies such as broken roofs, windows, and doors.4 Tenants endure failing heating and plumbing systems, lead hazards, and bedbug and rodent infestations.5 From 2009–2019, while about 30% of Milwaukee homes were renter-occupied, 62% of electrical fires occurred in rental units.6 The American Housing Survey has estimated that fully five thousand or more rental units in the City of Milwaukee constitute “extremely inadequate housing.”7 For the primarily low-income residents forced to subsist in such dwellings, these issues present serious habitability concerns.8

Recent research reveals a counterintuitive truth about the price of such low-quality housing. Data compiled in October 2020 shows that in Milwaukee census tracts with the lowest median property values, renters are in fact paying

1. MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 76 (2016) [hereinafter DESMOND, EVICTED].


4. Id. at 41.

5. Id.


7. COMMUNITY ADVOCATES PUBLIC POLICY INSTITUTE, supra note 3, at 40 (emphasis added) (internal quotations omitted).

the highest proportion of monthly rent per unit to assessed property value. In addition to suffering myriad health effects from living in such housing, low-income tenants are well overpaying for it.

This Comment proposes a novel legal strategy that is designed to ameliorate the problem of low-quality, overpriced rental housing: amending Wis. Stat. § 66.1015 to permit municipality implementation of a “rent-value correlation rate.” The rent-value correlation rate would serve primarily as an affirmative defense to eviction and would help to ensure that tenants do not owe excessive financial obligations relative to low-quality contracted housing. The correlation rate would spur landlords to improve (or at least maintain) the quality of the housing in order to elevate property values and maximum rents.

Part I examines the dynamics of the rental housing market in Milwaukee, using recent data to show that low-income tenants pay exceedingly high rents for low-quality and even substandard housing. Part II analyzes the legal strategies currently in place to address the problem of substandard housing, concluding that existing remedies offer insufficient protections to tenants who are entitled to safe and habitable shelter. Part IV focuses on the mechanics of the proposed rent-value correlation rate. For example, a municipality might decide that landlords may not charge more than 2.5% in monthly rent per unit as a percentage of the assessed property value. Tenants could then use the rent-value correlation rate as an affirmative defense to eviction. Because tenants would finally owe a financial obligation commensurate with the substandard quality of contracted housing, landlords would be motivated to maintain or improve the quality of the premises in order to restore or increase profit margins. Part V concludes that regardless of the political hurdles inherent to this proposal, the rent-value correlation rate would be a step in the right direction.


11. See Johnson, supra note 9; see also DESMOND, EVICTED, supra note 1, at 353 n.10; see also James E. Causey, ‘Evicted’ author says Milwaukee’s housing crisis remains unchanged, MILWAUKEE J. SENTINEL (May 9, 2018), https://www.jsonline.com/story/news/special-reports/50-year/2018/05/09/eviction-crisis-remains-unchanged/574579002/ [https://perma.cc/S299-4ZNK].
direction for the landlord-tenant community in Milwaukee and comparable locales.

II. THE HIGH PRICE OF LOW-QUALITY RENTAL HOUSING IN MILWAUKEE

Low-income tenants in Milwaukee pay the highest proportion of monthly rent per unit to assessed property value relative to other tenants. In one cluster of homes on Milwaukee’s predominantly African-American north side, for example, where the median income is $23,531 and the median assessed property value is $24,359, the median contract rent (excluding utilities) is $686 per month, or three percent of the median assessed property value for that area. In Bay View, on the predominantly White south side, by contrast, where the median income is $59,632 and the median assessed property value is $132,705, the median contract rent is only slightly higher: $725. Unlike the median contract rent on the north side, that number in Bay View represents not three percent but one percent of the median assessed property value for the area. In other words, renters in the lowest-income areas of the city—where assessed property values are the lowest—pay three hundred percent of what landlords charge as a function of assessed property value in other parts of the city. If the median assessed property value represents generally the quality of housing in a given census tract, then Milwaukee’s poorest residents are paying exceedingly high rents for low-quality and even substandard housing.

Novel research published in 2019 by Matthew Desmond—the Pulitzer-prize winning author of Evicted: Poverty and Profit in the American City—confirms this state of affairs. Using data from a restricted-use U.S. Census

12. See Johnson, supra note 9.
13. Id.; Appendix B.
14. Id.; Appendix C.
15. Id.
16. The first layer of assumption here is that the city-assessed value corresponds with the market value of the property. See Wis. Stat. § 70.32 (2019–2020) (“Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual . . . at the full value which could ordinarily be obtained therefor at private sale”); see also Wis. Dep’t Revenue, Wisconsin Property Assessment Manual 9-7, 9-20 (2021) https://www.revenue.wi.gov/documents/wpam21.pdf [https://perma.cc/JYY6-9N9W]; Standard on Mass Appraisal of Real Prop. 5 (Int’l Ass’n Assessing Officers 2013), https://www.iaao.org/media/standards/MARP_2013.pdf [https://perma.cc/YM8L-367Q]. Johnson’s research, which shows median assessed value patterns across the city, thus demonstrates market value patterns as well. Johnson, supra note 9. The next layer of assumption is that market value represents generally the quality of residential property. In describing the various factors that influence the assessed value of a residential property, the Wisconsin Property Assessment Manual (“PAM”) states that “[a] property in excellent condition generally has a higher value than a similar property in poorer condition.” Wis. Dep’t Revenue, supra note 16, at 9-19.
Bureau survey of landlords, and a recent survey of Milwaukee property owners, Desmond measured “renter exploitation” as the ratio of annual rents over property value: “Neighborhoods in which rents amount to a higher proportion of property value are characterized by higher exploitation.” Desmond’s data is significantly more comprehensive than the median values discussed above and provides indisputable evidence that low-income tenants pay too much for housing in relation to other renters. In high-poverty neighborhoods, exploitation rates “more than double[] as annual rents amount to 25% of property values.” Owing to several factors, “rental properties located in poor neighborhoods command higher regular profits,” even after taking landlord expenses into account. Indeed, on the national level, “landlords operating in poor neighborhoods enjoy median profits double those of landlords operating in affluent neighborhoods.” In Milwaukee, a landlord operating in a poor neighborhood produces a median monthly profit of $151 per rental unit after expenses. Landlords in more affluent neighborhoods make $21 per rental unit.

18. Id. at 1096; Interestingly enough, investors have long appreciated the usefulness of the rent over price ratio. From an investor’s perspective, rent-over-price describes potential profit margins and is thus employed as a crucial tool in deciding whether to purchase a property. See, e.g., Peggy Alford, Rent Ratio Tells You Whether Renting Or Buying Is The Better Deal, FORBES (Nov. 2, 2010), https://www.forbes.com/sites/greatspeculations/2010/11/02/rent-ratio-tells-you-whether-renting-or-buying-is-the-better-deal/?sh=305c215e9d08 [https://perma.cc/MY82-HE9S]. Desmond’s research is novel in its analysis of a similar number—the rent-to-assessed-value ratio—as a descriptor of tenant exploitation.
19. Desmond & Wilmers, supra note 17, at 1096–103. Desmond uses the exploitation rate to emphasize landlords’ monetary gains in the low-income housing market. I focus instead on the rent-value ratio as representative of low-income tenants’ lack of legal leverage with respect to making habitability demands on landlords. The more unlikely it is that a tenant will be able to pay their rent, the more unlikely it is that the tenant will have legal leverage to make reciprocal demands on the landlord. Even if housing conditions were perfectly equal across Milwaukee, low-income tenants would have less ability to mitigate habitability concerns based on a decreased likelihood of being able to pay the rent.
20. Id. at 1103.
21. Id. at 1107–08.
22. Id. at 1108.
23. Id.
24. Id. Desmond explains these numbers as such: “Landlords who have invested in a nonpoor neighborhood are not betting on today but on tomorrow. In poor neighborhoods, however, landlords are betting on today.” Id. at 1113.
In moderate to high-income areas of Milwaukee, by contrast, renters simply walk away from overpriced or uninhabitable properties.25 If a property is clearly in poor condition, or the landlord has a poor reputation in the community, the tenant will look for another place to live—because they can afford to do so. But in the lowest-income areas, tenants have few alternatives to renting overpriced, low-quality housing.26

This is because the low-income housing market functions less like a free market and more like an oligopoly.27 An indigent tenant may not realistically approach any landlord on the market; they will succeed in renting only from those landlords who are willing to overlook their poor credit, eviction history, criminal history, etc.28 The low-income housing market in fact defies the core economic assumption that “individuals enter markets as equal participants.”29 Even once the tenant enters into an economic relationship with the landlord, they are treated not as an “equal participant[.]” but as one bound by the “traits, whims, and even mood changes of their landlord[.]”30

This is not to suggest that landlords are entirely responsible for the fact of the unbalanced housing market. As Ezra Rosser has pointed out, even seemingly “exploitative” landlords in fact operate largely within the confines of the law.31 Rosser concluded that “[t]he market, combined with a legal


26. DESMOND, EVICTED, supra note 1, at 69 (“Poor families were often compelled to accept substandard housing in the harried aftermath of eviction. Milwaukee renters whose previous move was involuntary were almost 25 percent more likely to experience long-term housing problems than other low-income renters.”); see also Phillips & Miller, supra note 8, at 29.


28. Desmond & Wilmers, supra note 17, at 1116 (“Renters in poor neighborhoods are excluded from both home ownership and apartments in middle-class communities on account of their poverty, poor credit, eviction or conviction history, or race (through discrimination) . . . .”); see also Ezra Rosser, Exploiting the Poor: Housing, Markets, and Vulnerability, 126 YALE L.J. 458, 472–73 (2017); Mya Frazier, When No Landlord Will Rent to You, Where Do You Go?, N.Y. TIMES MAG. (May 20, 2021), https://www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html [https://perma.cc/Q27M-V8S6].

29. Rosser, supra note 28, at 471. He later concludes that “[t]he notion that the low-income housing market can be understood as a series of voluntary transactions among equals is undercut by the relative power of landlords and the desperation of tenants.” Id. at 475.

30. Id. at 471.

31. Id. at 462–63 (“[T]he strongest case for labeling [landlord activity] exploitation is not so much that [landlords] violate the law but that they exploit the unfair advantages the law provides to landlords in the eviction process.”).
structure that largely supports the interests of landlords . . . exploits the inability of the poor to make meaningful demands on landlords.”

Part III examines the mechanics of that “legal structure” as it affects tenants’ ability to make “demands on landlords” related to the habitability of their homes. Tenants’ interests in safe and habitable housing have been underemphasized in recent decades, with commentators tending to focus less on habitability and more so on the economic effects of rent control. Though the national discussion has shifted substantially toward “affordability,” the problem of substandard housing remains an important national concern. Deborah Hodges Bell and Lydia Hodges Suffling have argued that “housing needs are not met simply by the provision of additional housing.” A crucial problem is the “need for a method by which tenants may require their landlords to provide habitable dwellings.”

III. WISCONSIN LAWS IMPOSING LIABILITY FOR SUBSTANDARD HOUSING

There are a handful of legal tools currently in place to address the problem of substandard housing. For instance, a tenant might sue their landlord for breaching the contractually implied warranty of habitability. Or a tenant might sue for breach of explicit lease obligations such as the landlord’s promise to make timely repairs. In the event the landlord fails to satisfy the implied warranty of habitability or more explicit contractual obligations, the tenant might reach out to a regulatory agency in a bid to force repairs.

32. Id. at 474. See also Barbara Bezdek, Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process, 20 HOFSTRA L. REV. 553, 538 n.14. Like Bezdek’s article, this Comment aims “less to resurrect [tenants’] particular substantive rights . . . than to expose the fallacies underlying the granting of ‘rights’ to subordinated people.” Id.

33. Matthew Desmond points out that although policymakers and researchers have concluded that America “has made impressive strides toward improving the housing quality for its poor,” the problem of habitability has been unduly pushed to the side as the affordability conversation has taken hold. See DESMOND, EVICTED, supra note 1, at 355 n.16. But the problems of habitability and affordability are “interlocked. At the bottom of the housing market, each permits the other.” Id.; see also Matthew Desmond & Monica Bell, Housing, Poverty, and the Law, 11 ANN. REV. L. & SOC. SCI. 15, 29 (2015) (“[A]n overabundance of research on certain housing policies and a paucity of studies on more elemental aspects of housing markets—means that many questions absolutely central to the lives of poor families remain largely unanswered.”); Anna Reosti, “We Go Totally Subjective”: Discretion, Discrimination, and Tenant Screening in a Landlord’s Market, 45 L. SOC. INQUIRY 618, 646 (2021) (“[A] time when a reinvigorated sociology of housing has brought attention to the central role of the rental housing market in shaping patterns of disadvantage, understanding the broader social context in which fair housing laws play out is particularly important.”).

34. See Deborah Hodges Bell & Lydia Hodges Suffling, In Search of a Habitable Home in Mississippi, 49 MISS. L.J. 881, 881 (1978); see also DESMOND, EVICTED, supra note 1, at 355 n.16.

35. See Bell & Suffling, supra note 34, at 881.

36. Id.
A brief analysis of each of these legal tools will show that their effectiveness is limited. The problem of substandard housing still plagues Wisconsin—specifically, Milwaukee—to a significant extent. Though the existence of substandard housing is unlikely to be solved entirely in Milwaukee or elsewhere, new legal tools can at least alleviate the problem.

A. Explicit Lease Provisions

To the tenant who enters into some form of rental agreement, the landlord may owe an obligation to repair the premises. Wisconsin common law has recognized a landlord’s affirmative duty to make repairs based on explicit lease provisions since at least 1937. That obligation is also codified in Wisconsin Agriculture, Trade, and Consumer Protection Code (“ATCP”) § 134.07, which states that every promise to “clean[], repair[], or otherwise improve[] [the premises]” must be fulfilled by the date or time period specified in the rental agreement.

In the event the landlord fails to complete the agreed-upon repairs in the specified timeframe, the tenant may theoretically bring a breach of contract action. But for low-income tenants with hourly-wage work, poor health, or childcare obligations, small claims court is an intimidating forum in which to raise a claim. As the Civil Division of Milwaukee County cautions prospective small claims filers on its information webpage, a “civil case has many court hearings. You must appear in person for each one.” Even for tenants with the time to show up to the hearing(s), “[t]he court cannot help . . . with discovery” or other matters. Tenants rarely succeed in procuring legal representation. Unsurprisingly, one seminal court survey reported that tenants were plaintiffs in just 0.5% of all small claims cases.

37. Karla A. Fancken, Lead-Based Paint Poisoning Liability: Wisconsin Realtors, Residential Property Sellers, and Landlords Beware, 77 MARQ. L. REV. 550, 578 (1994); see also Flood v. Pabst Brewing Co., 158 Wis. 626, 626, 149 N.W. 489, 491 (1914) (explaining that “the landlord is liable to the tenant for breach of contract to repair”).
38. ATCP § 134.07.
39. See Bezdek, supra note 32, at 536.
40. MILWAUKEE COUNTY COURTS, Civil Court: Large Claims, Small Claims, Family and Paternity; https://county.milwaukee.gov/EN/Courts/Court-Divisions/Civil-Court [https://perma.cc/K8EU-8LHP].
41. Id.
43. Bezdek, supra note 32, at 559 n.87.
For those tenants haled into small claims court as defendants, many have no knowledge of the defenses available to them. The next section, concerning the implied warranty of habitability, bears this out: even the tenant who attempts to offer an affirmative defense in eviction court is often stymied by their understandable lack of familiarity with the intricacies of landlord-tenant law.

B. Implied Warranty of Habitability

Aside from explicit provisions, the landlord-tenant relationship is also governed by the implied terms of the lease. Recognizing the “need and social desirability of adequate housing for people in this era of rapid population increases,” the Wisconsin Supreme Court in Pines v. Perssion became one of the first courts to recognize an implied warranty of habitability in residential leases. The Wisconsin State Legislature, by the time of the Pines decision in 1961, had already implemented a host of statutes and regulations aimed at imposing basic habitability requirements on residential properties. After referencing the legislature’s “policy judgment . . . that it is socially (and politically) desirable to impose [certain] duties on a property owner,” the Pines court added that “[p]ermitting landlords to rent ‘tumbledown’ houses is at least a contributing cause of such problems as urban blight, juvenile delinquency and high property taxes for conscientious landowners.” This recognition of the implied warranty of habitability foreshadowed a national judicial trend toward recognizing residential leases not as mere “conveyance[s] of an interest in land” but as contractual agreements.

The state legislature subsequently codified the implied warranty of habitability at Wis. Stat. § 704.07 in 1977. A landlord has a duty to keep the premises in a “reasonable state of repair,” to include maintenance of “supply

45. See infra Section III.B.
46. SUSIE BRIGHT, LANDLORD AND TENANT LAW IN CONTEXT 26–27 (2007).
47. See Pines v. Perssion, 14 Wis.2d 590, 59–96, 111 N.W.2d 409, 412–13 (1961); see also Patricia Jones D’Angelo, Property—Landlord-Tenant—Landlord No Longer Immune from Tort Liability for Failure to Exercise Reasonable Care in Maintaining Premises. Pagelsdorf v. Safeco Insurance Co. of America, 91 Wis. 2d 734, 284 N.W.2d 55 (1979), 64 MARQ. L. REV. 563, 568 (1981); Bell & Suffling, supra note 34, at 886.
48. Pines, 14 Wis.2d at 595–96.
49. Id. at 596.
50. See Barbara Maier, Landlord and Tenant Law—The Implied Warranty of Habitability in Residential Leases, 58 MARQ. L. REV. 191, 192, 195 (1975); see also Bell & Suffling, supra note 34, at 890–92; see generally Javins v. First Nat’l Realty Corps., 428 F.2d 1071 (D.C. App. 1970).
51. D’Angelo, supra note 47, at 568 n.31.
services . . . such as heat, water, elevator, or air conditioning.”

The landlord must also perform “all necessary structural repairs” and comply with applicable housing codes. Explicit assignment of these duties aside, the Wisconsin Court of Appeals clarified in 2006 that under § 704.07(4), “Untenantability,” independent causes of action are restricted to “material” health or safety violations.

But the Wisconsin State Legislature appeared to expand subsection (4) in 2018 to justify rent abatement not only for “condition[s] materially affect[ing] the health or safety of the tenant” but also for those conditions “substantially affect[ing] the use and occupancy of the premises.” Whether this new language has in fact expanded the range of independent causes of action is unclear. No court has yet had reason to apply the new language.

Another part of the statute, Wis. Stat. § 704.07(2)(bm), seems in tension with the implied warranty of habitability. Subsection 2(bm) appears to condone “building code or housing code violation[s]”—even those that present a “significant threat to the prospective tenant’s health or safety”—so long as the landlord discloses the violation before entering into the lease. Legal commentators have suggested that subsection (bm) effectively “allows landlords to rent out sub-standard apartments.” In Wisconsin, the implied warranty of habitability apparently does not apply to “prospective” tenants.

All other tenants seeking relief under § 704.07 may pursue various remedies: full or partial rent abatement, rescission of the lease, or a counterclaim to the landlord’s action for rent or possession. The tenant may pursue such remedies regardless of the existence or terms of the written lease. The availability of such remedies to the tenant theoretically motivates the

60. Section 704.44 prohibits any lease provision that “[w]aives any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition or to maintain the premises during the tenant’s tenancy.” Wis. Stat. § 704.44(8).
landlord to maintain the premises. In practice, however, the landlord retains the upper hand.

Though Wis. Stat. § 704.07 provides for rent withholding and abatement, the statute says nothing about how to abate rent, and Milwaukee does not have an ordinance governing rent abatement. Rent abatement procedures are “tricky” to the point of defying “common sense.” Raphael Ramos, director of the Eviction Defense Project in Milwaukee, said in an interview in 2018 that renters naturally withhold rent in full upon discovering rodents, or mold, or broken heat or plumbing. But what these renters tend not realize is that per § 704.07(4), total withholding is only permissible if the renter has physically and justifiably moved out of the property (i.e., constructive eviction).

The Eviction Defense Project regularly encounters such clients—renters who have endured uninhabitable living conditions but who are nonetheless subject to eviction (in addition to owing back rent) because of their lack of familiarity with the intricacies of rent withholding and abatement procedures in Milwaukee.

Adding to the confusion, housing code violations do not necessarily equate to “material” health or safety violations for which a tenant may abate or withhold their rent. The Wisconsin Supreme Court in Posnanski v. Hood

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61. Maier, supra note 50, at 204 (“The doctrine of implied warranty of habitability and fitness in residential leases appears to be a progressive dual function doctrine: first, it provides optional remedies to the tenant where the demised premises are unfit for habitability, and secondly, it serves to pressure landlords into maintaining the premises they lease.”).

62. See Summers, supra note 42, at 203–04 (“These findings strongly suggest that the warranty of habitability is not serving as an effective tool to compel the performance of needed repairs.”).

63. Milwaukee is not unique in this respect. See Serge Martinez, Revitalizing the Implied Warranty of Habitability, 34 NOTRE DAME J.L. ETHICS & PUB. POL’Y 239, 257 (2020) (“A tenant facing the threat of eviction for unintentional arrearage is likely to immediately confront procedural obstacles imposed by legislatures eager to prevent a tenant from raising the implied warranty of habitability . . . .”).

64. TENANT RESOURCE CENTER, Rent Abatement, https://www.tenantresourcecenter.org/rent_abatement [https://perma.cc/S7L4-WMLB].


66. Id.

67. Id.

68. Id. As an illustration of the complexity of rent abatement procedures in Milwaukee, see the Tenant Resource Center’s “Rent Abatement” guidelines at https://www.tenantresourcecenter.org/rent_abatement [https://perma.cc/S7L4-WMLB], supra note 64. The process first entails notifying the landlord of the concern and hoping that the landlord takes action. If the landlord fails to remedy the issue, the tenant should call the Department of Neighborhood Services (“DNS”) to assess the property. If the DNS finds a code violation, the landlord will be notified of the repair deadline by mail. If the repairs are still not made, the tenant may then apply to DNS in order to pursue “City-sanctioned rent withholding” in an escrow account, or the tenant may call another third party, Community Advocates, in order to seek a rent reduction.
pointed out that local housing codes do not define “habitability” or “untenantability.”\textsuperscript{69} The court in that case refused to sanction rent abatement as a means of enforcing the housing code despite the defendant’s goal to “eradicate[e] substandard housing.”\textsuperscript{70} Were the court to read the housing code to define “uninhabitability,” judicial proceedings would ultimately supplant administration regulation.\textsuperscript{71}

Even now, in 2021, the term “untenantability” as used in § 704.07 remains undefined. One Milwaukee legal commentator has suggested equating the term with “uninhabitability.”\textsuperscript{72} The term “habitability violation” is in fact defined elsewhere in the Wisconsin Statutes at § 66.0104(1) to include a unit that “lacks hot or cold running water” or lacks a heating system “capable of maintaining a temperature.”\textsuperscript{73} Other violations may be found in units that lack electricity, smoke detectors, or carbon monoxide detectors, or units that are “infested with rodents or insects” or “excessive mold.”\textsuperscript{74} This definition would indeed provide useful context for “untenantability” and “uninhabitability” as referenced elsewhere in the statutes.\textsuperscript{75}

Even if rent abatement procedures were crystal clear, the remedy would prove ineffective for many tenants. Jana Ault Phillips and Carol J. Miller summarize its usefulness simply: “Tenants need faster remedies. They cannot afford to pay rent in escrow and a second rent for a habitable apartment. If they continue to live in a mold- or bedbug-infested apartment while waiting for a remedy, their health will deteriorate and the social injustice continues.”\textsuperscript{76}

The implied warranty of habitability is sound in theory, but difficult to apply in practice.\textsuperscript{77} It has even been referred to as “dead letter law.”\textsuperscript{78} The University of Chicago Law Review in 2020 published the results of a large-scale study of the implied warranty of habitability in practice, which found that in

\begin{itemize}
\item\textsuperscript{69} Posnanski v. Hood, 46 Wis.2d 172, 182–83, 174 N.W.2d 528, 533 (1970).
\item\textsuperscript{70} Id. at 178, 531.
\item\textsuperscript{71} Id. at 182, 533; see also Bell & Suffling, supra note 34, at 894.
\item\textsuperscript{73} WIS. STAT. § 66.0104(1) (2019–2020).
\item\textsuperscript{74} Id.
\item\textsuperscript{75} See Bell & Suffling, supra note 34, at 894.
\item\textsuperscript{76} See Phillips & Miller, supra note 8, at 26.
\item\textsuperscript{77} See Rosser, supra note 28, at 462–63 (“[Milwaukee] is hardly the only city in the country where the implied warranty of habitability is more of a paper right than a meaningful check on landlords.”).
\item\textsuperscript{78} Id. at 468 (“[T]he implied warranty is largely dead letter law. It does not protect tenants from eviction and the main question courts ask is whether a tenant is behind in rent, not if there are questionable conditions in the unit.”).
\end{itemize}
New York City housing court, even among tenants with meritorious claims, less than two percent received rent abatements. The study is significant in another respect: the implied warranty of habitability as it is applied in New York City does not entail “onerous notice, good faith withholding, or rent escrow requirements”—cumbersome hurdles that tenants do face in Wisconsin. The author of the study concluded that where such hurdles exist, “[i]t certainly may be the case that even fewer tenants benefit from the warranty of habitability.”

C. Housing Code Regulations

Only after a tenant has notified their landlord of a habitability concern—and only after the landlord has failed to address that complaint—should a tenant consider seeking enforcement action under the local housing code. As the Department of Neighborhood Services (DNS) for the City of Milwaukee warns on its “Complaint Process” webpage, the administrative agency manages over 25,000 residential property complaints each year—“95 [complaints] per day for every day of the week.” The agency encourages tenants to attempt to resolve housing code violations with the landlord before calling DNS.

But as numerous observers have pointed out in recent years, landlords are sometimes unmotivated to make repairs. Matthew Desmond in Evicted profiled one Milwaukee landlord who deliberately stopped maintaining her properties as soon as they stopped “cash[ing] out.” The Milwaukee Journal Sentinel a few months later published an investigative series entitled “Landlord Games” that exposed similar abusive practices among a small number of delinquent landlords, colloquially described as “slumlords.” The Milwaukee City Attorney’s Office eventually initiated suit against a handful of

79. Summers, supra note 42, at 150.
80. Id. at 211.
81. Id.
83. Id.
84. Id.
85. See, e.g., Adam Travis, The Organization of Neglect: Limited Liability Companies and Housing Disinvestment, 84 AM. SOC. REV. 142, 143 (2019) (“Diminished concerns about the risk posed by expensive tenant litigation or code enforcement fines . . . might reduce a landlord’s incentive to assiduously maintain safe and healthy properties.”).
86. DESMOND, EVICTED, supra note 1, at 152.
landlords who had “figured out how to play the system, milking properties for maximum profit, then walking away after they stop[ped] paying taxes.” The same article notes that the city in 2015 filed 937 tax foreclosure suits, “wiping out $10.5 million in unpaid property taxes for the former owners. That’s a sum equal to the salaries of 176 rookie police officers.”


Though the city has prevailed with some success in major lawsuits against five or six of these problem landlords,\textsuperscript{91} housing code violations remain difficult to enforce on a ground level. When the more typical landlord fails to remedy a violation by the DNS-imposed deadline, enforcement steps include sending the debt to collection, issuing an arrest warrant, or imposing a property lien.\textsuperscript{92} But in many cases, landlords can simply ignore these consequences. As mentioned above, one option is to let the property “go back to the city”\textsuperscript{93}—absolving the landlord of the obligation to pay all outstanding property taxes.\textsuperscript{94} And though the landlord retains responsibility for the fines and may be subject to an arrest warrant on the basis of those outstanding fines, the warrants have little effect.\textsuperscript{95}

Just several months before the Milwaukee City Attorney’s Office initiated its fight in 2016 to hold “notorious”\textsuperscript{96} landlords accountable for tens of thousands of dollars in municipal housing code violations, then-Governor Scott Walker signed 2015 Wisconsin Act 176 into effect.\textsuperscript{97} Act 176 limited the power of municipal government to enforce local housing code, leading Milwaukee Mayor Tom Barrett to describe it as a “step backward.”\textsuperscript{98} Prior to Act 176, “additional” levels of housing inspections had been permitted in certain

\begin{footnotesize}
\begin{enumerate}
\item See generally A Journal Sentinel Watchdog Report: Landlord Games, supra note 87.
\item DNS Enforcement (Court) Section, CITY OF MILWAUKEE DEPT’ NEIGHBORHOOD SERVS., https://city.milwaukee.gov/DNS/Inspections_Sections/Enforcement [https://perma.cc/BR9F-DD87].
\item DESMOND, EVICTED, supra note 1, at 354 n.16.
\item Cary Spivak, Milwaukee is Looking to Force Landlords to Pay Taxes and Stop Gaming the System, MILWAUKEE J. SENTINEL (Apr. 24, 2017), https://www.jsonline.com/story/news/investigations/2017/04/24/milwaukee-looking-force-landlords-pay-taxes-and-stop-gaming-system/100848528/ [https://perma.cc/58PT-VDMD] (“When the property can no longer provide adequate rent, the landlord stops paying taxes and lets the city seize it—a move that erases the tax debt while giving the city title to a rundown house or duplex.”).
\item Cary Spivak, Watchdog Update: Judge Orders Notorious Milwaukee Landlord to Pay up, MILWAUKEE J. SENTINEL (June 3, 2016), https://www.jsonline.com/story/news/investigations/2016/06/04/watchdog-update-judge-orders-notorious-milwaukee-landlord-to-pay-up/85504664/ [https://perma.cc/5VC3-MUTG]; see also Spivak & Crowe, supra note 89.
\item Assemb. B. 568, 2015–16 Leg., Reg. Sess. (Wis. 2016) (enacted as Act 176); see also Spivak & Crowe, supra note 89.
\item Act 176 was backed by landlord and apartment owner groups and opposed by the cities of Milwaukee and Madison. Spivak & Crowe, supra note 89.
\end{enumerate}
\end{footnotesize}
neighborhoods on the north side of Milwaukee. Now, the city may inspect rental properties only upon “complaint by any person, as part of a program of inspections . . . under s. 66.0119, or as required under state or federal law.” Act 176 effectively repealed city ordinances mandating “certification” of rental properties in targeted neighborhoods. The legislation also specified that the fee for a subsequent reinspection of a property cannot be more than twice the fee charged for an initial reinspection, which reduced the fee in the city of Milwaukee from $355 to about half that. For the “notorious” landlords who make a habit of letting their properties go “back to the city,” Act 176 significantly reduced their operating costs.

Scholars have long debated the continuing effectiveness of local housing codes with respect to both habitability and affordability. Overall, there is an absence of empirical evidence proving that modern housing codes are beneficial for tenants. At least in Milwaukee, enforcement difficulties, compounded by landlord-tenant laws that favor the former, render the local housing code an often-ineffective means by which the tenant can address habitability concerns.

D. Prohibition Against Retaliatory Eviction

Alas, for the tenant whose heater fails in the middle of January, neither the city’s struggle to enforce fines, nor the implications of Act 176, are top of mind. Instead, the greatest obstacle to getting the heat turned back on is that of retaliatory eviction. When a tenant in arrears expresses dissatisfaction with housing conditions to their landlord or to the DNS, the landlord might retaliate by filing for eviction.


103. Spivak & Crowe, supra note 89 (“Until March [of 2016], the procedure could cost a landlord up to $355 per visit. But a change in state law set a cap on the amount, limiting it to no more than twice what the initial inspection costs. In the city, that reduced the charge to $120.”).

104. Desmond & Bell, supra note 33, at 21–22.

105. Id.

106. See DESMOND, EVICTED, supra note 1, at 18; see also Extended Conversation on Housing: Kail Decker and Raphael Ramos, supra note 25. Few records exist from which to determine how often
Wisconsin does prohibit “retaliatory conduct.” The Wisconsin Supreme Court in *Dickhut v. Norton* affirmed the social desirability of a prohibition against retaliatory eviction after discussing the problem of “blighted, substandard and insanitary housing conditions . . . detrimental to the public interest.” Other courts have similarly cited the improvement of public health and housing conditions as a primary policy in adopting prohibitions on retaliatory eviction.

But like the implied warranty of habitability, the prohibition against retaliatory conduct seems to be useful only in theory. A landlord “may not increase rent, decrease services, bring an action for possession of the premises, refuse to renew a lease,” or threaten to do any of those things if a preponderance of the evidence suggests that the landlord is retaliating against the tenant for making a “good faith complaint” about the premises or “[e]xercising a legal right relating to residential tenancies” more generally. But the statute also says that a landlord may still bring the eviction suit if the tenant has not paid rent. In other words, tenants in arrears are not protected by the prohibition. Regardless of the condition of the housing or the landlord’s obligations under the explicit or implied terms of the lease, a tenant in arrears becomes an effectively *legal* victim of retaliatory eviction if they so much as hint to their landlord that they might call DNS. The prohibition against retaliatory eviction—a tool that upon first blush appears to protect a tenant’s right to seek safe, habitable housing—in fact protects only those tenants who can pay. Ironically, it is those tenants who cannot pay who are most in need of retaliatory eviction protections.

### E. Recent Legislative Efforts

As the above discussion of current legal remedies for substandard living conditions illustrates, tenants’ struggles in housing court are rooted deeper than personal circumstance. The legal system itself “reinforce[s] the powerlessness
of tenants’ socially subordinated position” with respect to landlords. In many ways, the system fails to recognize tenants’ substantive rights.

Due in large part to the 2016 publication of Matthew Desmond’s Pulitzer-prize winning book, *Evicted*, the City of Milwaukee has become more aware of some of the ways in which its legal system (and that of Wisconsin) perpetuates—or at the very least permits—the existence of substandard housing. This is not to suggest that most, or even many, landlords or other participants in the legal process intentionally abuse the system. On the contrary, most landlords operate in good faith, “merely attempting to earn a reasonable return on their investments by providing a vital service to our society.”

The community itself has taken measures to mitigate some of the problems described above. In addition to the city attorney’s legal pursuit of certain abusive landlords from 2016 to 2018, the state legislature recently passed 2017 Wisconsin Act 339, which prohibits buyers with significant outstanding property taxes or code violation judgments from purchasing property at a sheriff’s sale. The effect of that law has been to prevent the worst housing code offenders from purchasing additional properties that would likely fall into disrepair. Another piece of legislation enacted around the same time, 2017 Wisconsin Act 104, improved the deed registration process pursuant to a

114. See Bezdek, supra note 32, at 538 n.14 (referring to the “fallacies underlying the granting of ‘rights’ to subordinated people”); see also Desmond, Evicted, supra note 1, at 104–06 nn.16–17 (discussing the strong implicit bias toward tenants in small claims court); Phillips & Miller, supra note 8, at 28 (“Although some jurisdictions are taking steps to improve tenants’ education and representation, far too many court systems remain a dead-end for tenants.”) (footnote omitted); Summers, supra note 42, at 213–17; Lee Harris, Judging Tenant Protections: The Evidence from Enforcement of Landlord Penalties, 42 U. MEM. L. REV. 149, 152 (2011) (“[L]andlords fare surprisingly well in small claims courts, in spite of pro-tenant protections.”).
115. See, e.g., Causey, supra note 11.
116. Lindsey, supra note 106, at 102; see also Extended Conversation on Housing: Kail Decker and Raphael Ramos, supra note 25. Milwaukee landlords have been frustrated by recent media coverage of the city’s rental market. See, e.g., Tristan Pettit, The Landlords’ Side of the Story, TRISTAN’S LANDLORD–TENANT L. BLOG (Dec. 13, 2020) https://petriepettit.com/blog/landlord-tenant/the-landlords-side-of-the-story [https://perma.cc/87NA-WVMR] (“The media also tend to treat all landlords as large companies making lots of money at the expense of tenants. Did you know that the vast majority of landlords throughout the U.S. are small ‘mom & pop’ landlords that own rental property in addition to working a full-time job?”).
sheriff’s sale so that the buyer—not the previous owner—is held accountable for subsequent property taxes and code violations.\textsuperscript{119}

Most recently, Milwaukee County created a “right to counsel” program in 2021 which will be re-evaluated after a six-month trial period.\textsuperscript{120} The program provides low-income renters (specifically, those making less than 200% of the federal poverty level) with free legal representation during eviction proceedings.\textsuperscript{121} The city plans to staff the program with twelve lawyers specializing in housing law.\textsuperscript{122} A similar program in New York, enacted in 2017, has proved effective: tenants with legal representation during eviction proceedings were allowed to remain in their homes in 84% of cases citywide.\textsuperscript{123}

The effectiveness of these policies in the Wisconsin rental market remains to be seen. It may take years, or even decades, to determine whether Acts 104 and 339 have significantly hampered landlords’ ability to exploit the low-income housing market. In the meantime, the legislature must work to improve the legal system so that it permits recognition of tenants’ substantive rights.\textsuperscript{124}

\textbf{IV. THE RENT-VALUE CORRELATION RATE}

Though the problem of substandard housing may be unsolvable in the sense that low-quality and even uninhabitable units cannot be purged entirely from

\begin{footnotesize}

\textsuperscript{120} Talis Shelbourne, \textit{Milwaukee County Has Established a Right to Counsel Program}. \textit{Here’s Why Advocates Say it Could Reduce Evictions}, MILWAUKEE J. SENTINEL (July 19, 2021), https://www.jsonline.com/story/news/local/milwaukee/2021/07/19/milwaukee-countys-right-counsel-program-expected-launch-sep-1/8011470002/?cid=facebook_Milwaukee_Journal_Sentinel&fbclid=IwAR28GFR7JhySP8vu5374rlSoulj0S5KuVz33Th0Tz0bB1v3kSCVPVUc [https://perma.cc/3874-NUUW].

\textsuperscript{121} \textit{Id.}

\textsuperscript{122} \textit{Id.}


\textsuperscript{124} See Bezdé, \textit{supra} note 32, at 538 n.14 (referring to the “fallacies underlying the granting of ‘rights’ to subordinated people”); see also DESMOND, \textit{Evicted}, \textit{supra} note 1, at 104–06 nn.16–17 (discussing the strong implicit bias toward tenants in small claims court); Phillips & Miller, \textit{supra} note 8, at 28 (“Although some jurisdictions are taking steps to improve tenants’ education and representation, far too many court systems remain a dead-end for tenants.”); Summers, \textit{supra} note 42, at 213–17; Harris, \textit{supra} note 114 (“[L]andlords fare surprisingly well in small claims courts, in spite of pro-tenant protections.”).
\end{footnotesize}
the rental stock, there are still ways to mitigate harms to tenants. As discussed in the previous section, legal remedies such as the implied warranty of habitability or regulatory housing codes already provide some measure of relief to tenants who possess the financial means to utilize such legal tools. But for tenants without means—for the tenant who fears retaliatory eviction should they call the Department of Neighborhood Services, or for the tenant who is a few hundred dollars behind on their rent and thus has no leverage in eviction court—there is currently no practicable way to address the broken toilet or the rats living in the walls. These tenants must accept the fact of the substandard housing in which they live or risk eviction.

It is high time to implement a novel legal tool that addresses substandard housing without imperiling the very tenants it aims to protect. The best (but scarcely known) proposal along these lines is the “rent-value correlation rate,” a concept originally proposed in 2018 by then-Milwaukee Assistant City Attorney, Kail Decker. As an “exception” to Wis. Stat. § 66.1015, the rent-value correlation rate would give municipalities the option to cap monthly rent charged per unit as a percentage of the assessed annual property value (for example, 2.5%). The rent-value correlation rate would serve primarily as an affirmative defense to eviction and would also help to ensure that tenants do not owe a financial obligation that is excessive in relation to the low quality of the contracted housing. Landlords would be motivated to maintain or improve the quality of the housing in order to elevate property values and maximum rents.

125. See Sections III.B–C.
126. “Rent” refers to “contract rent”: the rent paid to the landlord (excluding utilities).
128. Decker, supra note 127.
The rent-value correlation rate would apply only to residential properties, or “Class 1” properties, to include one, two, and three-family homes.\(^{129}\) Residential properties comprise at least eighty-eight percent of Milwaukee’s housing stock.\(^{130}\) The assessed value of such properties does not take rental values into account because the city does not know whether a residential property is being rented.\(^{131}\) Commercial properties, which are valued in part on the basis of recorded rental rates,\(^{132}\) would not be subject to the rent-value correlation rate.

The rent-value correlation rate would yield only positive outcomes for tenants, profit-driven but fair landlords, and the community as a whole. For the tenant who is paying $900 per month to rent a dilapidated house valued at only $30,000 for annual property tax purposes, they would now have an affirmative defense to eviction should their landlord attempt to eject them for a few hundred dollars in delinquent rent. The court will find that they owe nothing at all in terms of “back rent” if they have paid at least $750 per month (2.5% of $30,000) for the duration of their tenancy. In other words, the court will dismiss the eviction suit if the tenant has paid a fair rent in relation to the objective quality of the housing. Stated yet another way, landlords cannot evict tenants whom they have been overcharging to live in inadequate housing. The court may grant the eviction only if the tenant has failed to pay an amount correlative with the substandard quality of the housing.

A lower rent may provide the added benefit of making it easier for the tenant to pay.\(^{133}\) The general economic consensus is that a household should not spend more than 30% of gross income on rent and utilities.\(^{134}\) In the north side census tract depicted in Appendix B, the median percentage of income

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129. See Wis. Dep’t of Revenue, supra note 16 at 7-14.
132. Id.
133. See Johnson, supra note 9. Tenants in lower-income tracts pay a higher proportion of rent to income.
134. See Out of Reach: The High Cost of Housing, Nat’l Low Income Hous. Coal. 1 (2018), https://nlihc.org/sites/default/files/oor/OOR_2018.pdf [https://perma.cc/GQV9-2Y32] (“Affordability in this report is consistent with the federal standard that no more than 30% of a household’s gross income should be spent on rent and utilities. Households paying over 30% of their income are considered cost burdened. Households paying over 50% of their income are considered severely cost burdened.”).
spent on gross rent is 39%.135 In a neighboring tract, that number is an outrageous 50%.136 But under the rent-value correlation rate, a household that receives a $200 reduction in monthly rent would pocket an additional $2,400 per year, reducing its percentage of income spent on gross rent by about ten percent.137 For families living below or near the poverty line, that number is significant.

A tenant who is more likely to make their rent payments is less likely to accumulate one or more evictions on their record, which means that they are less likely to remain trapped in substandard housing. Even for the inevitable group of tenants who remain unable to meet the lower cost of substandard housing under the rent-value correlation rate, those tenants will at least accumulate a “fairer” amount of debt.

Courts might see a decrease in eviction filings overall. Landlords who continue to overcharge for rent might hesitate to file an eviction suit against a tenant who is just a few hundred dollars delinquent in rent.

From the city’s perspective, the proposal is cost-free on its face. Because the rent-value correlation rate would be implemented as an affirmative defense to eviction and not as a proactive regulatory tool, the city need not allocate a single dollar toward this proposal in the form of agency funds or otherwise. Indeed, the city may even stand to gain financially.138 Take, as an example, a landlord who appears to be charging excessive rent in proportion to the assessed property value, but whose property has in fact been underassessed. In such a case, the landlord might be motivated to report the true value of the property in order to restore their ability to charge the rate that they were charging before the implementation of the rent-value correlation rate. The city would receive increased tax revenue as a result of the landlord self-reporting the true value of the property.139

Finally, from the perspective of the profit-driven—but fair—landlord, the rent-value correlation rate presents no specter of threat. Former Milwaukee Assistant City Attorney Kail Decker has estimated that under a 2.5% cap, eighty

135. “Gross rent” includes both contract rent and utilities.
136. See Appendix D.
137. (Median household income [23,531]) / ($200 x 12 mos.) = 10.2%. See Appendix B. (Median household income [20,969]) / ($200 x 12 mos.) = 11.4%. See Appendix D.
138. Interview, supra note 130. In conversation with Jeffrey Arp, the author learned that a homeowner may provide up-to-date information about home improvements to the Assessor’s Office in support of a request for a higher assessed value. Homeowners typically request such increases before putting a property up for sale. The rent-value correlation rate would incentivize landlord-owners to report upgrades in real time.
139. Id.
percent of Milwaukee landlords would see no effect on their rental rates at all.\textsuperscript{140} A municipality could adjust the cap depending on the percentage of landlords it is unwilling to shield from the law.\textsuperscript{141} Only those landlords charging more than the agreed-upon cap would be directly impacted by the legislation. In this way, a municipality could use the tool as a scalpel to target slumlord practices only.

Even the minority of landlords compelled to decrease rents will not be deprived of a fair rate of return. Matthew Desmond illustrated this point well in Evicted. Sherrena, the landlord who owned most of the rental housing that Desmond described on Milwaukee’s north side, summed up her business like this: “The 'hood is good. There’s a lot of money there.”\textsuperscript{142} Sherrena’s monthly mortgage payments rounded out to $8,500, but she collected about $20,000 in rent.\textsuperscript{143} After paying the water bill, she estimated that her profits were about $10,000 a month.\textsuperscript{144} Desmond described her dozens of tenants as “around or below the poverty line.”\textsuperscript{145} Sherrena was especially excited about purchasing a duplex that cost only $8,500, because after spending about $3,000 on repairs, “[i]t would take only eight months to make that money back. After that, ‘[the property] just cashed out.’”\textsuperscript{146} This rate of return for landlords is not possible in the Milwaukee County suburbs, where mortgage payments and tax bills are much higher.\textsuperscript{147}

In discussing his proposal for a rent-value correlation rate with Milwaukee Magazine in 2018, Decker offered consistent estimations of landlord profit margins in lower-income areas of the city.\textsuperscript{148} He pointed to a duplex on the northwest side, advertised on Craigslist, that had been purchased for $23,000 and most recently assessed at $23,300. The property advertised $650 in monthly rent for each unit (5.6% rent-value correlation). At that rate, the

\textsuperscript{140} From October 2016 to October 2017, Decker collected a random sampling of Milwaukee rental rates (Craiglist.com) and corresponding assessed property values (publicly available data), calculating rent-value correlation in the process. Of 346 data points, only 70 rent-value ratios exceeded 2.5%. The Excel-recorded data is on file with the author. See Appendix E for a graphical depiction of these results.

\textsuperscript{141} The legislature might also set a minimum value for the rent-value correlation rate. Otherwise, the municipality might be empowered to implement a 1% rate, which would effectively become traditional rent control.

\textsuperscript{142} DESMOND, EVICTED, supra note 1, at 152.

\textsuperscript{143} Id.

\textsuperscript{144} Id.

\textsuperscript{145} Id.

\textsuperscript{146} Id.

\textsuperscript{147} Matthew Desmond noted that “[w]hen it came to return on investment, it was hard to beat owning property in the inner city.” DESMOND, EVICTED, supra note 1, at 152.

\textsuperscript{148} See Extended Conversation on Housing: Kail Decker and Raphael Ramos, supra note 25.
landlord would generate around $15,600 per year in revenue—or a 52% rate of return. Decker has posited that although the rate of return for landlords affected by the rent-value correlation rate would be lower than what they are accustomed to generating, the rate of return would still be much higher than the industry standard for residential property, which is 7% to 8%. For the above-described property valued at $23,000, the maximum allowed rent—$290 per unit—would still yield a 14% rate of return.

This seems fair. In states that practice traditional forms of rent control, courts have stated that a “just and reasonable” rate of return must be high.

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149. When the author asked Decker about his calculations in Milwaukee Magazine, supra note 25, Decker offered these details. The author has updated certain figures to incorporate Matthew Desmond’s 2019 research, supra note 17 at 1106:

ANNUAL REVENUE: ($650 x 2 units) x 12 months = $15,600
ANNUAL COSTS: (Mortgage Interest: $0) + (Real Estate Taxes: $1200) + (Insurance: $360) + (Utilities: $0) + (Vacancy: $348) + (Eviction expenses: $333) + (Maintenance/Repairs: $1,500) = Total annual costs = $3,741
ANNUAL PROFIT: Revenue – Costs = $11,859
Rate of Return on $23,000 purchase price: 52%

Landlords who purchase such cheap properties rarely obtain mortgages, paying instead with cash, hence the lack of a mortgage payment. See Desmond & Wilmers, supra note 17, at 1107. Median monthly property taxes in poor neighborhoods in Milwaukee hover around $100. Id. at 1106. Median monthly insurance costs in Milwaukee range between $20–$30. Id. The calculations next assume that the landlord charges utilities separately. The 5% vacancy rate is the industry standard. See Milwaukee Wisconsin Residential Rent and Rental Statistics, DEPT OF NUMBERS https://www.deptofnumbers.com/rent/wisconsin/milwaukee#:~:text=The%20rental%20vacancy%20rate%20is,according%20to%20Census%20data[https://perma.cc/7N8K-98RF], with Decker estimating one eviction per three years ($1,000/eviction). The maintenance estimate assumes that the landlord purchases the least expensive materials and labor.

150. Norada Real Estate Investments suggested in 2019 that the average rate of return on residential properties in Milwaukee is well below ten percent: “Rental real estate [in Milwaukee] has a [return on investment] of around 10% per year, half of which you see in appreciation, half of which is in returns.” Milwaukee Housing Market 2019: Home Prices & Investment Outlook, NORADA REAL EST. INVS. (Aug. 19, 2019), https://www.noradarealestate.com/blog/milwaukee-real-estate-market/ [https://perma.cc/38KD-TM3Y]; See also Beth Braverman, Do You Have What It Takes To Be A Landlord?, FORBES (Sep. 11, 2015), https://www.forbes.com/sites/bethbraverman/2015/09/11/want-to-be-a-landlord-read-this/?sh=357b475e4d2d [https://perma.cc/X2S2-RHS3] (citing national average rate of return of 8.94%).

151. ANNUAL REVENUE: ($290 x 2 units) x 12 months = $6,960
ANNUAL COSTS: (Mortgage Interest: $0) + (Real Estate Taxes: $1200) + (Insurance: $360) + (Utilities: $0) + (Vacancy: $348) + (Eviction expenses: $333) + (Maintenance/Repairs: $1,500) = Total annual costs = $3,741
ANNUAL PROFIT: Revenue – Costs = $3,219
Rate of Return on $23,000 purchase price: 14%.
enough to encourage good management, to reward efficiency, to incentivize capital, and to allow landlords to support their credit. The Supreme Court has also said in the price regulation context that “the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.” But a return should not be so high that it “defeat[s] the purposes of rent control [or permit[s] landlords to demand of tenants more than the fair value of the property and services which are provided.” In that vein, the rate need not match whatever rate existed before regulation.

The landlord community might object that the relatively higher rents imposed upon low-income tenants simply account for higher risks. When the Milwaukee Journal Sentinel interviewed notorious Milwaukee landlord Will Sherard in 2016 for “Landlord Games,” Sherard voiced a common sentiment among the landlord community: “A person like me is an asset,” he said. Sherard argued that inner-city landlords frequently deal with nonpayment of rent and even tenants who destroy the rental units. Properties “may be run down and have ‘mice, rodents, bedbugs, leaky ceilings.’” As Decker acknowledged in his conversation with Milwaukee Magazine, managing one or two-family rental buildings in low-income areas can be time-consuming and expensive. Managing such properties is associated with “hassle,” “stigma,” and “stress.”

But Matthew Desmond’s 2019 research demonstrates that even after accounting for maintenance and expenses, median landlord profit margins are higher in poor neighborhoods. Indeed, Desmond’s data demonstrates that “[p]oor renters pay double—purchasing the good and the risk—but because [landlord] losses remain infrequent in absolute terms, landlords typically realize


154. Troy Hills Village, 350 A.2d at 47.

155. Id.

156. Spivak, supra note 95.

157. Id.

158. Id.

159. Extended Conversation on Housing: Kail Decker and Raphael Ramos, supra note 25.

160. Id.

161. Id.

162. Desmond & Wilmers, supra note 17, at 1113.
the surplus ‘risk charge’ as higher profits.”

Desmond also pointed out that “market risk” and “exploitation” go “hand in hand”:

When the Federal Housing Administration redlined black neighborhoods, creating a dual housing market that enabled significant exploitation within these neighborhoods, it justified this decision by claiming that insuring mortgages in black communities was too risky. Beyond the housing market, a similar pattern can be observed today in pawnshops, check cashing stations, payday lenders, and rent-to-own businesses that cater to low-income consumers and explain high-interest charges on account of anticipated risk. In short, consumer exploitation is made possible when a disadvantaged group is deemed risky and forced to pay a social price.

In fact, landlord losses “are more often the result of nonpayment and vacancies than repairs and maintenance costs.” By overcharging the tenant, the landlord in effect creates (or at least exacerbates) the very risk that their high price is designed to mitigate: the nonpayment of rent.

From the supply side, driving slumlords out of the market would not necessarily cause a significant drop in available housing. Before exiting the market, the departing landlord might sell the property to a subsequent landlord, or even to the tenant. In fact, the law has the potential to increase homeownership rates in low-income communities. As the rent-value correlation rate decreases rents, capitalization rates would also decrease as home prices remain constant. With fewer landlords willing to purchase properties at current prices based on the lowered capitalization rates, home prices would ultimately drop, too. Those lowered prices would enable some tenants to purchase their homes.

163. *Id.* at 1116.
164. *Id.* at 1117 (in text citations omitted).
165. *Id.* at 1117–18.
166. Capitalization rate is used to determine potential return on investment. The “cap rate” is equal to net operating income (including rental revenue) divided by the current market value of the asset. *Capitalization Rate*, *CORP. FIN. INST.*
167. There is no uniform support for the proposition that homeownership necessarily contributes to individual and community economic development. *See* Stephanie M. Stern, *Reassessing the Citizen Virtues of Homeownership*, 111 COLUM. L. REV. 890, 891 (2011) (“In contrast to the prevailing politico-legal accounts, the empirical evidence reveals a more modest and particularized picture of citizenship effects. Rather than evincing global personal transformation, homeowners perform similarly or only modestly better than tenants of comparable residential duration in many domains, including most types of community organizational participation, neighboring behaviors, some forms
The landlord’s second option is to retain the property and charge a lower rent under the new law. Though still living in the same housing conditions, the tenant would at least pay rent commensurate with the quality of the low-quality or substandard housing.

In the better case version of this scenario, the landlord not only retains the property but is also incentivized to maintain or upgrade the premises in order to increase the property value and corresponding profit margins. The International Association of Assessing Officers—to whose appraisal standards the state of Wisconsin adheres—lists several property characteristics as important in determining residential property values. These factors include living area, construction quality, effective age or condition, “secondary areas” such as basements or garages, and “building features” such as bathrooms or central air-conditioning.168 A landlord who improves their property generally will see a corresponding increase in property value, which will enable them to charge a higher rent and collect increased profit over time.169 Until then, the tenant pays only for the quality of the housing in which they currently live.

Finally—and rather problematically—the landlord might just follow the path of least resistance and let the property “go back to the city.”170 According
to the Department of Neighborhood Services, there are already 1,800 homes listed as vacant in the city of Milwaukee. The passage of the rent-value correlation rate might therefore be accompanied by adjustments to homeownership laws. For example, the city should be able to intervene earlier than the two-year mark if a property is falling into rapid deterioration.

Alan Mallach, the former director of the department of housing and economic development in Trenton, N.J., recently opined in the Milwaukee Journal Sentinel that:

State laws should provide some way if a property is clearly vacant and abandoned to expedite giving that to someone who can do something with a property. They might still be able to rehabilitate for a reasonable cost. But if that property sits there for three to four years, it’s just going to deteriorate.

Policymakers would therefore need to pay close attention to the correlation rate’s effect on the supply of available rental housing. Should supply drop noticeably due to landlords abandoning their properties, the City of Milwaukee would need to double down on its efforts to hold landlords responsible for the inevitable deterioration of those properties.

V. ENACTING THE LEGISLATION

The relevant portion of Wis. Stat. § 66.1015 currently reads as follows:

1. No city, village, town or county may regulate the amount of rent or fees charged for the use of a residential rental dwelling unit.

2. This section does not prohibit a city, village, town, county, would benefit economically (and have the means to make repairs) even after lowered rents. See Desmond & Wilmers, supra note 17, at 1117–18. The landlord could feasibly continue to operate without having to abandon the property.


172. Id.

173. Id. (“[I]t is typically two years before a vacant home can be seized for nonpayment of taxes, according to the city treasurer’s office.”).

174. Id. (internal quotation marks omitted).

175. Alderman Robert Bauman proposed an interesting plan in July of 2020: that the city should use about $150 million of incoming federal funds from the American Rescue Plan Act to rehabilitate 700 homes that the city has acquired through property tax foreclosure. The Department of City Development would be responsible for rehabilitating the homes. Jeramey Jannene, Plan to Renovate Every City-Owned Home Gains Traction, URB. MILWAUKEE (June 30, 2021), https://urbanmilwaukee.com/2021/06/30/eyes-on-milwaukee-plan-to-renovate-every-city-owned-home-gains-traction/ [https://perma.cc/H6SW-VR5S].
or housing authority or the Wisconsin Housing and Economic Development Authority from doing any of the following:

(a) Entering into a rental agreement which regulates rent or fees charged for the use of a residential rental dwelling unit it owns or operates.

(b) Entering into an agreement with a private person who regulates rent or fees charged for a residential rental dwelling unit.

Enacting the rent-value correlation rate might result in the following changes:

1. No city, village, town or county may regulate the amount of rent or fees charged for the use of a residential rental dwelling unit unless that city, village, town or county enacts an ordinance in conformance with this subsection.

   (a) Any ordinance enacted under this subsection shall set a maximum amount of rent that can be charged per parcel per month for all residential units as a percentage of the tax-assessed value of the parcel. This amount may not be set below two percent.

   (b) The computation of rent under this section shall omit the actual cost of utilities and shall not include any charges for optional parking or storage. Required parking or storage charges shall be included in computing rent.\footnote{176}

Another subsection under (1) would reference implementation of the rent-value correlation rate as an affirmative defense to eviction and might describe the mechanics of how the defense works in a courtroom setting.\footnote{177} Other subsections would describe how the assessed property value is determined or even allude to parallel updates to the Wisconsin Department of Agriculture, Trade, and Consumer Protection code.

As of January 2021, the political makeup of the Wisconsin legislature does not appear to favor pro-tenant legislation, let alone any form of rent control. In fact, the prevailing attitude toward traditional rent control is hostile both inside and outside of Wisconsin (perhaps rightfully so).\footnote{178} But the rent-value correlation rate is not, in fact, traditional rent control. The correlation rate differs dramatically in purpose and substance. Traditional rent control “consists

\begin{itemize}
\item \footnote{176} Kail Decker provided the bulk of this suggested draft language in an email to the author.
\item \footnote{177} To calculate allowable rent, the court need only divide the assessed property value by the number of units. That number is divided by twelve. Property Assessment Data, CITY OF MILWAUKEE, http://assessments.milwaukee.gov/default.asp [https://perma.cc/9RFY-PG5L].
\item \footnote{178} Rosser, supra note 28, at 468.
\end{itemize}
of caps on price increases within the duration of a tenancy.”

Under the rent-value correlation rate, revenues are limited only by the landlord’s investments in the property. If the landlord makes improvements, they are entitled to recoup their costs fully in the form of higher rents.

Similar to a novel form of rent control proposed in the Cornell Journal of Law and Public Policy by Jorge Elorza, the proposal here “challenge[s] the conventional wisdom to the extent that it assumes rent control can have only one legitimate purpose—the reduction of tenant’s housing costs.” Unlike traditional rent control, the rent-value correlation rate promotes both affordability and habitability. As Elorza noted:

Depending on the needs of the local community, rent control may be designed to address an array of different goals, and each scheme will have different legal, economic, and political consequences. Much of the literature has missed these points and has declared broad pronouncements of the desirability of rent control without considering its infinite permutations.

The proposal here addresses the specific needs of Milwaukee, Wisconsin, where the lowest-income renters are burdened not by skyrocketing rents (as in traditional rent control cities like New York and San Francisco), but by steadily-overpriced low-quality housing. The rent-value correlation rate is a “permutation” of rent control in the broadest sense, as the rate designed to address the legal, economic, and political situation in Wisconsin. In states with analogous landscapes, the proposal may be considered in similar measure.


181. Id. at 4; see also Deborah H. Bell, The University of Mississippi Housing Law Clinic: A Local Law Office and Regional Law Center, 61 MISS. L.J. 501, 504 (1991) (“[L]egal tools used in the rest of the country for addressing housing problems may be lacking or may require approaches and solutions not common in urban areas of the country.”).

182. Matthew Desmond and Nathan Wilmers also point out that “[i]n low- and medium-cost housing markets, landlord profit margins are higher in poor neighborhoods; however, in the country’s most expensive housing markets, cities with comparatively high rents and a high proportion of renters, owning rental property in affluent communities may be more lucrative.” Supra note 17, at 1119. As a result, “[n]ew data and further research are needed to systematically identify and explain the dynamics of different housing markets, contributing to a nuanced and complex sociology of housing that could replace one-size-fits-all theories and policy prescriptions.” Id.
VI. CONCLUSION

Ezra Rosser writes that “[i]t is customary in the wake of an emergency to call on businesses to refrain from exploiting the emergency through price gouging.” At the beginning of the coronavirus pandemic in 2020, for example, then-Attorney General William P. Barr said, “We will not tolerate bad actors who treat the crisis as an opportunity to get rich quick. . . . [W]e will aggressively pursue bad actors who amass critical supplies either far beyond what they could use or for the purpose of profiteering.”

Regarding the exploitation of low-income tenants, Rosser observes that the public’s attitude toward price gouging “does not seem to apply when it comes to poverty.” Though medical research has clearly demonstrated the significant negative health effects of living in substandard housing, this “public health crisis” remains largely unaddressed.

The mechanics of landlord-tenant law especially compound habitability issues. The legal remedies currently available to tenants—the implied warranty of habitability, the prohibition against retaliatory eviction, local housing codes—provide relief in theory only. New legal tools are needed to provide

183. Rosser, supra note 28, at 475.
185. Rosser, supra note 28, at 475.
tenants with meaningful opportunities to pursue the safe, habitable housing to which they are entitled.\textsuperscript{188} The rent-value correlation rate is just a starting point.

ELLEN MATHESON*
APPENDIX A

*Figure 1: Rent-Value Correlation Rate*
Monthly Contract Rent Per Unit/Assessed Property Value

*Contract rent describes the rent paid to the landlord (excluding utilities).*
APPENDIX B

Figure 2: Rent-Value Correlation Rate
Monthly Contract Rent Per Unit / Assessed Property Value
Tract 55079008700 - North Milwaukee—Park West

Tract: 55079008700
landlord houses: 103.4
landlord units: 200.0
median value: 524,350
median gross rent: 9944
median contract rent: 9866
median household income: 32,531
median per household income spent on gross rent: 30.3%
gross rent as a % of home value: 4%
contract rent as a % of home value: 3%
total population: 1304
APPENDIX C

Figure 3: Rent-Value Correlation Rate
Monthly Contract Rent Per Unit/Assessed Property Value
Tract 55079018500 - South Milwaukee—Bay View
APPENDIX D

Figure 4: Median Percentage of Income Spent on Gross Rent
Tract 55079006400 - North Milwaukee

[Map of Tract 55079006400 showing median percentage of income spent on gross rent.]
APPENDIX E

Figure 5: Current Rent-Value Correlation Rates in Milwaukee

*Based on Kail Decker’s data collection efforts from October 2016–2017