Cut the Cap: Proposing Further Change to Oklahoma's Repair and Deduct Statute

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I. INTRODUCTION

A recent amendment to the Oklahoma Residential Landlord and Tenant Act sheds new light onto the rights and remedies available to tenants in Oklahoma, particularly the remedy of repair and deduct as it applies to a landlord’s breach of the implied warranty of
habitability. Working in tandem, the implied warranty of habitability and the repair and deduct method assign landlords the duty to maintain habitable residential rental properties, and, in the event that a landlord fails to do so, permit tenants to repair defects to their rental units and then deduct the repair costs from rent. In the recent amendment, the Oklahoma Legislature altered the cap associated with the repair and deduct method from one-hundred dollars ($100.00) to the amount of an individual’s monthly rent payment. This amendment is an improvement from the $100.00 cap because it will not require further modifications to the cap amount every few years to account for inflation. Nonetheless, the rent-based cap still has problematic consequences; namely, it promotes inequity for low-income renters. Additionally, it would be unwise to eliminate the repair and deduct provision, because the complete absence of a repair and deduct method comes with its own set of drawbacks: it forces tenants to either move out of their rental unit and terminate the lease or seek civil remedies through the courts. Likewise, a framework without a cap for limited situations only is undesirable because it may fail to address hazardous conditions for tenants. Oklahoma should therefore adopt a framework that keeps the repair and deduct method in place, as it aids in both expediency and cost-effectiveness for tenants seeking repairs. The state should also eliminate the repair and deduct cap altogether, without regard to the type of condition involved, which will rid the framework of inequitable implications.

5. See generally Statista Research Dep’t., Monthly Rent Affordable for Households in Selected Financial Situations in the United States in 2023, STATISTA (July 2023), https://www.statista.com/statistics/1064468/average-rent-affordable-for-low-income-households-usa/. The Statista Research Department reports that the affordable rent for a household in which one person earns the federal minimum wage is $377.00 per month, while the rent affordable to a household in which one person earns the average renter wage is $1,231.00 per month. The natural implication associated with these statistics is that impoverished tenants that rent more affordable units (i.e. units with lower monthly rent prices) will be permitted to deduct a relatively lesser amount when making repairs under a rent-based repair and deduct framework. This result was noted during Representative Bush’s study on the Oklahoma Residential Landlord and Tenant Act. See Interim Study on the Oklahoma Residential Landlord and Tenant Act: Hearing Before the Comm. on Judiciary – Civil, 58 Leg., 2nd Sess. (Okla. 2021) [hereinafter Interim Study] (statement of Eric Hallett, Statewide Coordinator of Housing Advocacy, Legal Aid Services of Oklahoma) (note that Eric Hallett made this statement in his individual capacity and not on behalf of Legal Aid Services of Oklahoma). A framework with no cap does not suffer from this drawback. See, e.g., COLO. REV. STAT. § 38-12-507(1)(e).
outcomes.\(^9\) Several states have adopted similar structures,\(^10\) and following their lead would benefit tenants, landlords, and society at-large.\(^11\)

Part II supplies an overview of the implied warranty of habitability, including its development throughout the country and its current role in landlord-tenant law. Part II next introduces the repair and deduct remedy as a solution to a breach of the implied warranty of habitability and details its emergence as well as its nuances.\(^12\)

Part III summarizes Oklahoma’s development of both the implied warranty of habitability and the repair and deduct method, including the codification of these concepts by the Legislature and interpretation of these concepts by Oklahoma courts.\(^13\) Part III additionally assesses Oklahoma’s past repair and deduct provision, recounts the efforts of community leaders and legislators to mend the issues that the past repair and deduct provision created, and examines the recent amendment to this provision.\(^14\)

Part IV introduces the five frameworks regarding the repair and deduct remedy that are utilized by states. The first of these frameworks is a repair and deduct provision which supplies a specific monetary cap.\(^15\) The second is a rent-based cap, as discussed above.\(^16\) The third framework does not include a repair and deduct provision at all, and instead offers alternatives such as termination of the rental agreement and court-awarded damages.\(^17\) The fourth framework is a repair and deduct provision without a specified cap for limited services only.\(^18\) Finally, the fifth framework is a repair and deduct provision without a specified cap, whether monetary or rent-based, and without limitations on based on types of services at-hand—the structure for which this comment advocates.\(^19\)

Part V begins with a discussion of specified monetary caps for repair and deduct provisions and argues that these caps are undesirable because legislators must continually adjust them in accordance with inflation.\(^20\) Next, Part V addresses rent-based caps and argues that they result in inequity for low-income tenants.\(^21\) Part V then discusses structures that lack the repair and deduct remedy completely and argues that this unduly burdens tenants.\(^22\) Next, Part V argues that no-cap statutes that include limitations based on the type of services involved may fail to address harmful conditions for tenants.\(^23\) Finally, part V urges the Oklahoma Legislature to adopt a structure with a repair and deduct remedy that does not include a cap of any kind.\(^24\)

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9. See supra note 5.
11. See supra note 5; Weitzman, supra note 8; see infra Section V.E.
12. G. S. G., Effect of Nonhabitability of Leased Dwelling or Apartment, 37 A.L.R. 711 (1925); see infra Part II.
14. Okla. Stat. tit. 41, § 121(B) (1978) (amended 2022); Interim Study, supra note 5; H.B. 3409, 58th Leg., Reg. Sess. (Okla. 2022); Okla. Stat. tit. 41, § 121(B) (2022); see infra Part III.
15. See 34 R.I. Gen. Laws § 34-18-30(a); see infra Part IV.
16. See, e.g., Mont. Code Ann. § 70-24-406(1)(b); see infra Part IV.
17. See, e.g., Ala. Code § 35-9A-404; see infra Part IV.
18. See, e.g., Alaska Stat. § 34.03.180(a)(1); see infra Part IV.
21. See supra note 5; see infra Part V.
22. Statutory frameworks that do not include a repair and deduct method often force a tenant to break the lease and move out, which can come with severe costs. See Ark. Code Ann. § 18-17-502; Weitzman, supra note 8, at 989; infra Part V.
23. See, e.g., Alaska Stat. § 34.03.180(a)(1); infra Part V.
24. See, e.g., Colo. Rev. Stat. § 38-12-507(1)(e); infra Part V.
II. MAKING IT FAIR TO REPAIR: THE DEVELOPMENT OF THE IMPLIED WARRANTY OF HABITABILITY AND THE REPAIR AND DEDUCT METHOD AS TOOLS FOR THE MODERN TENANT

The implied warranty of habitability has significant history in many jurisdictions throughout the United States. This doctrine imputes landlords with the responsibility of providing and maintaining a leased premises suitable for human occupancy. The development of the implied warranty of habitability reflects societal changes with regard to housing, as people across the United States began to obtain leases for the purpose of occupying housing structures themselves rather than deriving benefits from the land on which they sat. As the implied warranty of habitability became settled law, states have also addressed the related issue of how to enforce it. Enter: the repair and deduct method. In modern-day landlord-tenant relationships, the repair and deduct method acts as a tenant’s “self-help” mechanism to cure a breach of the implied warranty of habitability by allowing him to repair defects and then deduct the costs of doing so when the landlord neglects to make repairs after being given notice of the defect. Together, these two concepts have been essential in closing the gap in leverage between landlords and tenants in a multitude of jurisdictions throughout the United States.

A. The Emergence of the Implied Warranty of Habitability Throughout the United States

The implied warranty of habitability is best thought of as a great equalizer in landlord-tenant relationships. Indeed, this doctrine was designed to mitigate the fact that “tenants have far less bargaining power and capacity to inspect and maintain premises than landlords.” The common law fails to impose on landlords a duty to maintain or repair a leased dwelling unless the landlord engaged in fraud or concealment. This concept is better known as the doctrine of caveat emptor, which, in the context of residential leases, conveys that, even if a landlord fails to furnish a habitable dwelling, a tenant is nonetheless

26. WILLISTON, supra note 2, § 48.11.
27. Javins, 428 F.2d at 1078.
28. See 34 R.I. GEN. LAWS § 34-18-30(a); CAL. CIVIL CODE § 1942(a); DEL. CODE ANN. tit. 25, § 5307(a); HAW. REV. STAT. § 521-64(b)(1)–(2); 765 ILL. COMP. STAT. 742/5; KY. REV. STAT. ANN. § 383.635(1); ME. STAT. tit. 14, § 6026(2); MASS. GEN. LAWS ch. 111, § 127L; MISS. CODE ANN. § 89-8-15(1)(a)–(b); MO. REV. STAT. § 441.234(2); MONT. CODE ANN. § 70-24-406(1)(b); NEV. REV. STAT. § 118A.360(1); S.D. CODE INFRA LAWS § 43-32-9; TEX. PROP. CODE ANN. § 92.056(b)(3); UTAH CODE ANN. § 57-22-64(6)(a)(ii)(A); VT. STAT. ANN. tit. 9, § 4459(a); VA. CODE ANN. § 55.1-1244.1(c); WASH. REV. CODE § 59.18.100(2); ALASKA STAT. § 34.03.180(q)(1); ARIZ. REV. STAT. ANN. § 33-1364(A)(1); COLO. REV. STAT. § 38-12-507(1)(c); CONN. GEN. STAT. § 47a-13(a)(1); Doutherty v. Taylor & Norton Co., 63 S.E. 928, 929 (Ga. Ct. App. 1909); IOWA CODE § 562A.23(1)(a); LA. CODE CIV. PROC. ANN. art. 2694; MSU COLLEGE OF LAW, A PRACTICAL GUIDE FOR TENANTS & LANDLORDS 27–28 (2021); MINN. STAT. § 504B.425(c); NEB. REV. STAT. § 76-1427(1)(a); MARINI v. Ireland, 265 A.2d 526 (N.J. 1970); Jackson v. Rivera, 65 Misc.2d 468 (N.Y. Civ. Ct. 1971); N.D. CENT. CODE § 47-16-13(1); OR. REV. STAT. § 90.365(1)(a); Pugh v. Holmes, 405 A.2d 897 (Pa. 1979); TENN. CODE ANN. § 66-28-502(a)(1)(A); OKLA. STAT. tit. 41, § 121(B) (1978) (amended 2022).
29. DUNAWAY, supra note 2, § 48.75.
31. Id.
32. Id. at 334.
responsible for paying rent. Historically, caveat emptor was regarded as an adequate approach because leases were focused on land, as opposed to dwellings, due to the "primarily agrarian society in which the doctrine developed." This doctrine is problematic for tenants in residential leases, as they are forced to either vacate the property (while still under obligation to pay rent) and file suit against their landlord, or continue to live in an uninhabitable dwelling. In times of housing shortages, the negative consequences are heightened, as "[s]tark necessity very often forces a tenant into occupancy of premises far from desirable and in a defective state of repair."

To alleviate the harsh consequences for tenants caused by the caveat emptor approach, states enacted legislation charging landlords with the responsibility of maintaining and repairing residential premises—the implied warranty of habitability as we know it today. Courts, too, have played a role in establishing the implied warranty of habitability, either following legislators' lead or paving the way toward increased landlord responsibility independently. For example, in Pugh v. Holmes, the Pennsylvania Supreme Court abolished caveat emptor and instead adopted the implied warranty of habitability. The Court expressed that, under this doctrine, a tenant "may vacate the premises where the landlord materially breaches the implied warranty of habitability . . ." which would "terminate his obligation to pay rent under the lease." This decision, the Court explained, was within its proper purview because caveat emptor is a common law doctrine, and thus courts may autonomously reexamine its utility in light of changing societal policy.

The implied warranty of habitability has been recognized for a variety of housing impairments. Multiple jurisdictions have held that it is a breach of the implied warranty of habitability to fail to provide heat for a dwelling. Other breaches recognized across several jurisdictions are failures to supply water, light, power, and adequate plumbing, as well as insufficiency in combatting vermin or insect infestations and mold growth. Some courts have found a breach where a landlord failed to protect tenants from criminal activity, although there is a split among jurisdictions regarding this matter.

In essence, the implied warranty of habitability, as defined and developed by state statutes and court decisions, levels the playing field for tenants, where lack of bargaining power and sheer desperation often leave them in less-than-desirable positions. The implied warranty of habitability thus plays the role of hero for more than 44 million tenants.

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36. Pugh, 405 A.2d at 901.
37. See King, 495 S.W.2d at 69.
39. Id. at 398.
40. WILLISTON, supra note 2, § 48.11.
41. Id.
43. Id. at 907.
44. Id. at 904.
45. WILLISTON, supra note 2, § 48.11.
46. See, e.g., Amsterdam Realty Co. v. Johnson, 161 A. 339 (Conn. 1932).
47. See, e.g., Belanger v. Mulholland, 30 A.3d 836 (Me. 2011).
across the United States.\textsuperscript{57} This doctrine reflects the reality of modern-day landlord-tenant relationships, where “the vast majority [of tenants] . . . are interested, not in the land, but solely in ‘a house suitable for occupation.’”\textsuperscript{58} Recognition of a standard that rental properties must meet serves as the basis for a tenant’s ability to legally recover for a landlord’s failure to meet that standard\textsuperscript{59}—a key piece in the fight to secure equity and ease for residential tenants. One such method of recovery is known as “repair and deduct.”\textsuperscript{60}

**B. Repair and Deduct: A Mechanism by Which Tenants Can Cure Breaches of the Implied Warranty of Habitability**

If the implied warranty of habitability is a tenant’s hero, the repair and deduct method acts as its quintessential, trusty sidekick. Repair and deduct is a unique, yet nonetheless attractive, approach for curing a breach of the implied warranty of habitability. This remedy takes further aim at rectifying the aforementioned lack of practical choices for tenants whose dwellings fall into a state of disrepair.\textsuperscript{61} Instead of merely allowing tenants to vacate the premises and end rental payments to ameliorate a breach of the implied warranty of habitability, the repair and deduct approach allows tenants to procure repairs themselves if their landlord fails to do so after receiving notice of the condition.\textsuperscript{62}

Much like the implied warranty of habitability, the repair and deduct method has been established both by legislation and by courts.\textsuperscript{63} For example, in *Marini v. Ireland*, a landmark decision by the Supreme Court of New Jersey, the Court recognized repair and deduct as a valid remedy.\textsuperscript{64} In *Marini*, a tenant renting an apartment experienced issues with her toilet.\textsuperscript{65} She repeatedly attempted to inform her landlord of this defect but did not succeed.\textsuperscript{66} Eventually, the tenant paid a plumber to repair the toilet and deducted the amount from her next rental payment.\textsuperscript{67} Her landlord demanded that she pay her monthly rent in its entirety and brought an action alleging that the tenant was not legally permitted to offset the cost of the plumber’s repairs from such rent.\textsuperscript{68}

The court first recognized that the lease was subject to the implied warranty of habitability and then considered the rights and duties associated with this warranty.\textsuperscript{69} The court held that, while historically tenants were not entitled to make a repair and subsequently offset its cost against rent payments, this approach is appropriate given present-day circumstances.\textsuperscript{70} In explaining its decision, the court expressed that there is “little comfort” to a tenant during a time of housing shortage to merely allow him to vacate the premises and terminate rental payments.\textsuperscript{71} Rather, a tenant should be permitted to exercise the alternative remedy of making reasonable repairs and offsetting the cost of these repairs

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\item 57. JOINT CTR. FOR HOUS. STUDS. OF HARV. UNIV., AMERICA’S RENTAL HOUSING 2022, 1 (Marcia Fernald, ed., 2022).
\item 60. Pugh v. Holmes, 405 A.2d 897, 907–08 (Pa. 1979).
\item 61. See King v. Moorehead, 495 S.W.2d 65, 69 (Mo. Ct. App. 1973); Reitmeyer, 243 A.2d at 398.
\item 63. See, e.g., OKLA. STAT, tit. 41, § 121(B) (1978) (amended 2022); Marini, 265 A.2d 526.
\item 64. Marini, 265 A.2d 526.
\item 65. Id. at 528.
\item 66. Id.
\item 67. Id.
\item 68. Id.
\item 69. Marini, 265 A.2d at 534.
\item 70. Id. at 534–35.
\item 71. Id. at 535.
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against rent.72 Contrary to New Jersey’s approach, in California, the Legislature opted to recognize the repair and deduct method before courts addressed it.73 Section 1942 of California’s Civil Code—the provision regarding repair and deduct—was enacted in 1872,74 while the earliest California court case to acknowledge this remedy in any meaningful depth was decided in 1970.75

The repair and deduct method does not come without conditions. For example, in some states, before the tenant chooses to exercise the repair and deduct remedy, he is required to give prompt and adequate notice of the condition to his landlord and allow the landlord the chance to make the repairs.76 Further, at least one court has held that when tenants elect to use this remedy, if subsequent litigation arises, they carry the burden of proving that the landlord failed to make repairs and “that the cost of the repairs was reasonable.”77

The repair and deduct method is desirable because it gives tenants the opportunity to avoid the hassles of finding a new rental property while also ensuring that they live in a safe and healthy environment.78 Given these advantages, it is not difficult to see why thirty-five states have recognized repair and deduct as a cure for breach of the implied warranty of habitability in residential leases.79 Considering the nationwide interest in habitable housing, as recognized by the courts above,80 and the advantages associated with the repair and deduct method,81 it is unsurprising that Oklahoma eventually embraced both of these concepts.82 In fact, Oklahoma has over a century’s worth of history concerning these ideas.83

72. Id.
73. CAL. CIVIL CODE § 1942(a).
74. Id.
76. See ALASKA STAT. § 34.03.180(a)(1); OR. REV. STAT. § 90.365(1)(a) (instating notice requirements); LA. CODE CIV. PROC. ANN. art. 2694, N.D. CENT. CODE § 47-16-13(1) (providing that a tenant must wait for a “reasonable” amount of time before repairing the condition).
79. 34 R.I. GEN. LAWS § 34-18-30(a); CAL. CIVIL CODE § 1942(a); DEL. CODE ANN. tit. 25, § 5307(a); HAW. REV. STAT. § 521-64(b)(1)–(2); 765 ILL. COMP. STAT. 742/5; KY. REV. STAT. ANN. § 383.635(1); ME. STAT. HL. 14, § 6026(2); MASS. GEN. LAWS ch. 111, § 127L; MISS. CODE ANN. § 89-8-15(1)(a)–(b); MO. REV. STAT. § 441.234(2); MONT. CODE ANN. § 70-24-406(1)(b); NEV. REV. STAT. § 118A.360(1); S.D. CODED LAWS § 43-32-9; TEX. PROP. CODE ANN. § 92.056(e)(3); UTAH CODE ANN. § 57-22-6(4)(a)(ii)(A); Vt. STAT. ANN. tit. 9, § 4459(a); VA. CODE ANN. § 55.1-1244.1(c); WASH. REV. CODE § 59.18.100(2); ALASKA STAT. § 34.03.180(a)(1); ARIZ. REV. STAT. ANN. § 33-1364(A)(1); COLO. REV. STAT. § 38-12-507(1)(c); CONN. GEN. STAT. § 47a-13(a)(1); Doughtery v. Taylor & Norton Co., 63 S.E. 928, 929 (Ga. Ct. App. 1909); IOWA CODE § 562A.23(1)(a); LA. CODE CIV. PROC. ANN. art. 2694; MSU COLLEGE OF LAW, A PRACTICAL GUIDE FOR TENANTS & LANDLORDS 27–28 (2021); MINN. STAT. § 504B.425(c); NEB. REV. STAT. § 76-1427(1)(a); Marini, 265 A.2d 526; Jackson v. Rivera, 65 Misc.2d 468 (N.Y. Civ. Ct. 1971); N.D. CENT. CODE § 47-16-13(1); OR. REV. STAT. § 90.365(1)(a); Pugh v. Holmes, 405 A.2d 897 (Pa. 1979); TENN. CODE ANN. § 66-28-502(a)(1)(A); OKLA. STAT. tit. 41, § 121(B)(2022).
80. See Pugh, 405 A.2d at 904; Reitmeyer v. Sprecher, 243 A.2d 395, 398 (Pa. 1968).
81. Marini, 265 A.2d at 535 (recognizing repair and deduct as a viable method because simply permitting a tenant to move provides little comfort when housing is difficult to procure due to shortages).
82. OKLA. (TERR.) STAT. §§ 863–64 (1903); GEN. STAT. OKLA. § 5474 (1908); COMPILED OKLA. STAT. § 7371 (1921); OKLA. STAT. tit. 41, § 32 (1941) (amended 1978); OKLA. STAT. tit. 41, § 118; OKLA. STAT. tit. 41, § 121(B) (1978) (amended 2022); OKLA. STAT. tit. 41, § 121(B)(2022).
83. See OKLA. (TERR.) STAT. § 863 (1903).
III. OKLAHOMA LANDLORD-TENANT LAW: ALL’S WELL THAT AMENDS WELL

Much like the development of the implied warranty of habitability throughout the United States, Oklahoma, too, recognized caveat emptor until it became clear that this method no longer adequately served tenants’ interests as the state was “fast approaching the same balance of rural-urban inhabitants as the United States as a whole.” Interestingly, Oklahoma has recognized the implied warranty of habitability and the repair and deduct method in some form since before it was admitted as a state to the United States, yet the law regarding the repair and deduct method has evolved over time. Equity demands that the repair and deduct method in Oklahoma continue to evolve.

A. Oklahoma’s Adoption of the Implied Warranty of Habitability and the Repair and Deduct Method

Oklahoma’s Legislature has played a major role in adopting the implied warranty of habitability for residential leases. Meanwhile, Oklahoma courts have seldom discussed this concept in any depth. Even prior to statehood, the territory of Oklahoma recognized an implied warranty of habitability of sorts in a provision stating, “[t]he lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation and repair all subsequent dilapidations thereof . . . .” Somewhat similarly, the current version of Oklahoma’s Residential Landlord and Tenant Act states that “[a] landlord shall at all times during the tenancy . . . make all repairs and do whatever is necessary to put and keep the tenant’s dwelling unit and premises in a fit and habitable condition . . . .” This statute demonstrates Oklahoma landlords’ responsibility to keep rented residential dwellings in a livable state.

Like the implied warranty of habitability, the repair and deduct method has been a key player in Oklahoma landlord-tenant law. Oklahoma currently recognizes the repair and deduct method in the Oklahoma Residential Landlord and Tenant Act, but the state recognized this remedy long before the Act was adopted. As early as 1903, territorial law of Oklahoma referred to this doctrine, stating in part, that “[i]f within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, and deduct the expense of such repairs from the

84. Inspiration for this title is taken from WILLIAM SHAKESPEARE, ALL’S WELL THAT ENDS WELL.
86. OKLA. (TERR.) STAT. §§ 863–64 (1903); The Center for Legislative Archives, Oklahoma Statehood, November 16, 1907, NATIONAL ARCHIVES (May 30, 2019), https://www.archives.gov/legislative/features/oklahoma#:~:text=On%20September%201907%2C%20the,as%20fifty%20of%20the%20forty%20states.
87. See OKLA. (TERR.) STAT. §§ 864 (1903); GEN. STAT. OKLA. § 5474 (1908); COMPILED OKLA. STAT. § 7371 (1921); OKLA. STAT. tit. 41, § 32 (1941) (amended 1978) OKLA. STAT. tit. 41, § 118; OKLA. STAT. tit. 41, § 121(B) (1978) (amended 2022); H.B. 3409, 58th Leg., Reg. Sess. (Okla. 2022); OKLA. STAT. tit. 41, § 121(B) (2022).
88. OKLA. STAT. tit. 41, § 118.
89. See OKLA. (TERR.) STAT. § 864 (1903).
90. OKLA. STAT. tit. 41, § 118.
91. Marjorie Downing, The Oklahoma Residential Landlord and Tenant Act—The Continuing Experience, 17 TULSA L. REV. 97, 100 n.18 (1981) (noting that “[t]he Oklahoma residential landlord’s obligation to maintain rental property has long been defined by statute.”).
93. See OKLA. STAT. tit. 41, § 121 (2022); OKLA. (TERR.) STAT. § 864 (1903).
This language was codified at Oklahoma’s statehood. Oklahoma also codified this method in compiled statutes of Oklahoma from 1921, and later in the 1941 statutes, both of which utilized the same language as the territorial law in 1903. Oklahoma courts have also addressed the repair and deduct remedy on multiple occasions. For example, in Ewing v. Cadwell, the Oklahoma Supreme Court emphasized that the repair and deduct method is a statutory concept in Oklahoma, stating, “the Legislature has made plain the duty of the landlord ... and ... has just as plainly provided the remedy for the tenant for a failure on the part of the landlord to make repairs.” The court then echoed the Legislature and concluded that, in the event of a landlord’s failure to make repairs, a tenant can make the repairs and then deduct the associated expenses from rent.

In Prince Hall Village Apartments v. Braddy, the Oklahoma Court of Civil Appeals further interpreted Oklahoma’s statutory language regarding repair and deduct. In this 1975 case, Judy Braddy rented an apartment and soon discovered that it was infested with roaches. After the landlord failed to provide the apartment with pest control, Braddy hired an exterminator, paid him to treat the apartment, and deducted this cost from her next month’s rent. Braddy’s landlord began refusing her rental payments and alleged that she had not paid in full due to the deduction. The landlord subsequently ordered her to move out and brought action against her for rent deficiency. The court ultimately concluded that Braddy was legally justified in withholding the exterminator’s bill from her rent payment.

In explaining its holding, the court stated that permitting Braddy to withhold the bill “comports with the policy of this state regarding the rights of the lessee in the event a lessor breaches a duty to keep leased building in ‘a condition fit for human occupation.” Among these “rights” that the court referred to was, of course, the repair and deduct remedy. The court further explained that “if after notice of the building being in a harmful state the lessor fails to correct it, then . . . the lessee may rectify the situation and deduct the expense thereof from the rent.”

Most recently, in Stone v. Linden Real Estate, Inc., the Oklahoma Court of Civil Appeals further outlined the contours of the repair and deduct method. Two tenants had leased an apartment and noted HVAC issues that damaged their personal belongings.
The landlord failed to resolve this HVAC problem. The court held that, while the remedies in the Oklahoma Residential Landlord and Tenant Act (“ORLTA”) are the remedies available for breach of the implied warranty of habitability, the same is not the case for personal property. The court expressed that, “[a]lthough the ORLTA provides Tenants with a remedy when the leased dwelling is uninhabitable . . . [it] does not provide a remedy for Landlord’s breach of duties resulting in damage to Tenants’ personal property.” Accordingly, the court concluded that the tenants could make use of common law remedies for damage to their personal belongings. This case clarifies that the repair and deduct method is properly utilized with issues of uninhabitability only.

The cases above, along with the Oklahoma Residential Landlord and Tenant Act, successfully paint a clear picture of what the repair and deduct method looks like and how it is applied in Oklahoma, but some elements are still subject to the drawing board, such as the cap on the amount that a tenant may deduct from their rent after making a repair.

B. The Former Oklahoma Residential Landlord and Tenant Act Instituted a Specified Monetary Cap in Relation to the Repair and Deduct Method

Since it was enacted, the Oklahoma Residential Landlord and Tenant Act formerly enumerated a monetary cap of $100.00 for tenants who chose to exercise the repair and deduct remedy. The relevant provision of the previous version of the Act—Section 121—states that, if there is a breach of the implied warranty of habitability by the landlord that “materially affects health,” and that breach can be remedied by repairs that reasonably cost less than $100.00, “the tenant may notify the landlord in writing of his intention to correct the condition at the landlord’s expense after the expiration of fourteen (14) days.” In the event that the landlord does not comply within those 14 days, or, in an emergency, as promptly as a condition requires, the tenant is permitted to “cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection [$100.00].” Further, the previous version also expresses that, when a tenant chooses to exercise the repair and deduct method as described above, the rental agreement will not terminate due to the landlord’s breach of the implied warranty of habitability.

The above language remained in place for over forty years, and Oklahoma tenants suffered the effects of the outdated law until advocates highlighted the need for a change. In September 2021, former Oklahoma House of Representatives member Carol Bush conducted a study on Oklahoma’s Residential Landlord and Tenant Act, which revealed the Act’s deficiencies and provided suggestions to overcome them. The study was held before the Oklahoma House of Representatives Judiciary-Civil Committee and

112. Id.
113. Id. at 871.
114. Id.
117. OKLA. STAT. tit. 41, § 121(B) (1978) (amended 2022).
118. Id.
119. Id.
120. Id.
121. See id.; H.B. 3409, 58th Leg., Reg. Sess. (Okla. 2022); OKLA. STAT. tit. 41, § 121(B) (2022).
122. Interim Study, supra note 5.
included speakers from several landlord- and tenant-based initiatives across Oklahoma.  

During the study, speaker Katie Dilks, executive director of the Oklahoma Access to Justice Foundation, revealed that Oklahoma had the lowest repair and deduct cap in the United States. Dilks noted that landlord-tenant law serves multiple purposes: to protect owners’ property rights, and also to ensure habitable housing and guard tenants against hazardous living conditions and harassment. A challenge stemming from the 1978 version of the Oklahoma Residential Landlord and Tenant Act, Dilks observed, is its insufficiency in ensuring habitable properties.

The study also included a large quantity of data regarding eviction rates in Oklahoma; specifically, that Oklahoma has an eviction rate of 4.24 percent, which is twice the national average and places Oklahoma at the sixth highest eviction rate nationally. While conveying this data, Dilks stated that “this is not because our state is poorer, because our rents are higher, because our tenants are more rent-burdened, because we have worse renters in some way. It’s directly tied to our laws and policies . . . .” Dilks bolstered this point by expressing that, in addition to Oklahoma, the other states with top-ranking eviction rates also have laws that are outdated, favor landlords, and permit bad actors to exploit loopholes.

Speaker Jeff Jaynes, the executive director of Restore Hope Ministries, recounted the story of Vista Shadow Mountain apartment complex in Tulsa, Oklahoma, where, in 2021, tenants were removed from the premises at the insistence of the Fire Marshal because of safety concerns. Speaking about this event, Jaynes explained that there are several other apartment complexes in Tulsa that are bordering on the same situation. Jaynes further remarked that these instances occur because “we don’t have the regulatory framework . . . to make sure that we’re providing safe and healthy households for our community.”

Ginny Bass Carl, a speaker from Community CARES Partners, also commented on the inhabitable conditions in rental properties that she has seen in her role, stating, “what people live in, I wouldn’t wish it on my worst enemy . . . .”

Among the proposed solutions for the inhabitable housing issue was an increase in the repair and deduct cap. During the study, Oklahoma Representative Anthony Moore noted that $100.00 in 1978 is now worth more than $400.00. In light of this information, the committee discussed methods of instating a more meaningful, yet reasonable amount for the cap. It was suggested that tying the cap to an amount based on rental price would be favorable, and Dilks added that this approach is fairly popular amongst the other states.

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124. Id.
125. Id. (statement of Katie Dilks, Executive Director, Oklahoma Access to Justice Foundation).
126. Id. (statement of Katie Dilks, Executive Director, Oklahoma Access to Justice Foundation).
127. Interim Study, supra note 5 (statement of Katie Dilks, Executive Director, Oklahoma Access to Justice Foundation).
128. Id. (statement of Katie Dilks, Executive Director, Oklahoma Access to Justice Foundation).
129. Id. (statement of Katie Dilks, Executive Director, Oklahoma Access to Justice Foundation).
130. Id. (statement of Katie Dilks, Executive Director, Oklahoma Access to Justice Foundation).
131. Id. (statement of Jeff Jaynes, Executive Director, Restore Hope Ministries).
132. Interim Study, supra note 5 (statement of Jeff Jaynes, Executive Director, Restore Hope Ministries).
133. Id. (statement of Ginny Bass Carl, Community CARES, Partners).
134. Id. (statement of Anthony Moore, Representative, Oklahoma House of Representatives).
135. Id.
136. Id. (statement of Eric Hallett, Statewide Coordinator of Housing Advocacy, Legal Aid Services of Oklahoma) (note that Eric Hallett made this statement in his individual capacity and not on behalf of Legal Aid Services of Oklahoma).
137. Interim Study, supra note 5 (statement of Katie Dilks, Executive Director, Oklahoma Access to Justice Foundation).
In all, the study illuminated areas where the Oklahoma Residential Landlord and Tenant Act fell short regarding tenants’ needs and prompted much-needed changes to the law. The study’s necessity and impact are heightened by the fact that some 35 percent of Oklahomans are renters.\textsuperscript{138} And record-breaking eviction rates in Oklahoma due to a “nationwide crisis in affordable housing”—marked by all-time high eviction filings in several Oklahoma counties during the first half of 2022—only further exacerbate the issues outlined in the study.\textsuperscript{139} Echoing the call-to-action expressed by the study, Jaynes simply declared, “. . . we can do better. We should do better.”\textsuperscript{140}

C. The Recent Amendment to the Oklahoma Residential Landlord and Tenant Act

Introduced a Rent-Based Cap in Relation to the Repair and Deduct Method

In May 2022, following the study discussed above, the Oklahoma Legislature enacted House Bill 3409, which modified Section 121 by instituting a new framework for the reimbursement cap associated with the repair and deduct remedy.\textsuperscript{141} In lieu of the $100.00 cap, HB 3409 specifies that a tenant electing to use the repair and deduct method may be reimbursed by his landlord for an amount up to one month’s rent.\textsuperscript{142} More specifically, the Bill states that, in the event of a breach of the implied warranty of habitability, which “materially affects health,” is “remediable by repairs,” and reasonably costs “equal to or less than one month’s rent,” a tenant may elect to repair the condition “in a workmanlike manner.”\textsuperscript{143} The Bill then permits the tenant to “deduct from his or her rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection” (i.e. one month’s rent).\textsuperscript{144} The Bill also preserves the duty of the tenant to notify his landlord of the condition in writing before making the repair, and to provide his landlord with an itemized statement before deducting the cost of the work.\textsuperscript{145} Further, HB 3409 maintains the original time requirement wherein the landlord has 14 days, or “as promptly as conditions require in the case of an emergency” to ameliorate the breach before a tenant may utilize the repair and deduct method.\textsuperscript{146} Lastly, just as in the previous version of the provision, the Bill specifies that “the rental agreement

\begin{itemize}
\item \textsuperscript{138} Id. (statement of Eric Hallett, Statewide Coordinator of Housing Advocacy, Legal Aid Services of Oklahoma) (note that Eric Hallett made this statement in his individual capacity and not on behalf of Legal Aid Services of Oklahoma).
\item \textsuperscript{139} Ryan Gentzler, \textit{It’s Time for Action to Address Oklahoma’s Eviction Crisis}, OKLAHOMA POLICY INSTITUTE (Sept. 9, 2022), https://okpolicy.org/its-time-for-action-to-address-oklahomas-eviction-crisis/.
\item \textsuperscript{140} Interim Study, supra note 5 (statement of Jeff Jaynes, Executive Director, Oklahoma Access to Justice Foundation).
\item \textsuperscript{142} H.B. 3409, 58th Leg., Reg. Sess. (Okla. 2022).
\item \textsuperscript{143} Id. House Bill 3409 states, in relevant part: “Except as otherwise provided in this act, if there is a material noncompliance by the landlord with any of the terms of the rental agreement or any of the provisions of Section 118 of this title which noncompliance materially affects health and the breach is remediable by repairs, the reasonable cost of which is equal to or less than one month’s rent, the tenant may notify the landlord in writing of his intention to correct the condition at the landlord’s expense after the expiration of fourteen (14) days. If the landlord fails to comply within said fourteen (14) days, or as promptly as conditions require in the case of an emergency, the tenant may thereafter cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection, in which event the rental agreement shall not terminate by reason of that breach.”
\item \textsuperscript{144} Id.
\item \textsuperscript{145} Id.
\item \textsuperscript{146} Id.
\end{itemize}
shall not terminate” due to the breach of the implied warranty of habitability in the event that a tenant chooses to repair and deduct.\footnote{147}

By making this adjustment, the Oklahoma Legislature put into place the proposed change advocated for during Representative Bush’s study on the Oklahoma Residential Landlord and Tenant Act.\footnote{148} Of the change, Representative Bush remarked that she was thankful the governor recognized the need for the legislation, and that “tenants can now get more immediate relief if landlords are unable to make timely repairs.”\footnote{149} The Bill went into effect on November 1, 2022, marking a new era of tenant-landlord relations in Oklahoma.\footnote{150} While HB 3409 does alleviate the issue of inflation and better equips tenants to deal with unceasing breaches of the implied warranty of habitability, other states offer better solutions. In analyzing how these states avoid inequity by removing a repair and deduct cap altogether,\footnote{151} it becomes clear that there is room for Oklahoma to improve its repair and deduct statute even further.

IV. DIFFERENT FRAMEWORKS REGARDING REPAIR AND DEDUCT AS A REMEDY TO THE IMPLIED WARRANTY OF HABITABILITY: NOT ALL ARE CREATED EQUAL

Although forty-nine of the fifty states and the District of Columbia recognize the implied warranty of habitability,\footnote{152} methods for recognizing the rights based on this warranty differ.\footnote{153} A majority of states identify repair and deduct as a cure for breach of the implied warranty of habitability,\footnote{154} but there are several states that do not.\footnote{155} While the general concept of repair and deduct is settled law in many jurisdictions,\footnote{156} the states differ

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\begin{itemize}
  \item 148. Interim Study, supra note 5.
  \item 149. Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4.
  \item 150. Id.
  \item 151. See supra note 5.
  \item 152. Ashley E. Bachelder et al., Health Complaints Associated with Poor Rental Housing Conditions in Arkansas: The Only State Without a Landlord’s Implied Warranty of Habitability, FRONTIERS IN PUB. HEALTH, Nov. 2016, at 1, 1; D.C., MUN. REGS. tit. 14, § 301.
  \item 153. Compare VT. STAT. ANN. tit. 9, § 4459(a), with ALA. CODE § 35-9A-404(b).
  \item 154. 34 R.I. GEN. LAWS § 34-18-30(a); CAL. CIVIL CODE § 1942(a); DEL. CODE ANN. tit. 25, § 5307(a); HAW. REV. STAT. § 521-64(b)(1)-(2); 765 ILL. COMP. STAT. 742/5; KY. REV. STAT. ANN. § 383.635(1); ME. STAT. tit. 14, § 6026(2); MASS. GEN. LAWS ch. 111, § 127L; MISS. CODE ANN. § 89-8-15(1)(a)-(b); MO. REV. STAT. § 441.234(2); MONT. CODE ANN. § 70-24-406(1)(b); NEV. REV. STAT. § 118A.360(1); S.D. CODED LAWS § 43-32-9; TEX. PROP. CODE ANN. § 92.056(c)(3); UTAH CODE ANN. § 57-22-64(a)(ii)(A); VT. STAT. ANN. tit. 9, § 4459(a); VA. CODE ANN. § 55.1-1244.1(c); WASH. REV. CODE § 59.18.100(2); ALASKA STAT. § 34.03.180(a)(1); ARIZ. REV. STAT. ANN. § 33-1364(A)(1); COLO. REV. STAT. § 38-12-507(1)(e); CONN. GEN. STAT. § 47a-13(a)(1); Dougherty v. Taylor & Norton Co., 63 S.E. 928, 929 (Ga. Ct. App. 1909); IOWA CODE § 562A.23(1)(a); LA. CODE CIV. PROC. ANN. art. 2694; MSU COLLEGE OF LAW, A PRACTICAL GUIDE FOR TENANTS & LANDLORDS 27–28 (2021); MINN. STAT. § 504B.425(c); NEB. REV. STAT. § 76-1427(1)(a); Marini v. Ireland, 265 A.2d 526 (N.J. 1970); Jackson v. Rivera, 65 Misc.2d 468 (N.Y. Civ. Ct. 1971); N.D. CENT. CODE § 47-16-13(1); OR. REV. STAT. § 90.365(1)(a); Pugh v. Holmes, 405 A.2d 897 (Pa. 1979); TENN. CODE ANN. § 66-28-502(a)(1)(A); OKLA. STAT. tit. 41, § 121(B) (2022).
  \item 155. See, e.g., ALA. CODE § 35-9A-404(b).
  \item 156. 34 R.I. GEN. LAWS § 34-18-30(a); CAL. CIVIL CODE § 1942(a); DEL. CODE ANN. tit. 25, § 5307(a); HAW. REV. STAT. § 521-64(b)(1)-(2); 765 ILL. COMP. STAT. 742/5; KY. REV. STAT. ANN. § 383.635(1); ME. STAT. tit. 14, § 6026(2); MASS. GEN. LAWS ch. 111, § 127L; MISS. CODE ANN. § 89-8-15(1)(a)-(b); MO. REV. STAT. § 441.234(2); MONT. CODE ANN. § 70-24-406(1)(b); NEV. REV. STAT. § 118A.360(1); S.D. CODED LAWS § 43-32-9; TEX. PROP. CODE ANN. § 92.056(c)(3); UTAH CODE ANN. § 57-22-64(a)(ii)(A); VT. STAT. ANN. tit. 9, § 4459(a); VA. CODE ANN. § 55.1-1244.1(c); WASH. REV. CODE § 59.18.100(2); ALASKA STAT. § 34.03.180(a)(1); ARIZ. REV. STAT. ANN. § 33-1364(A)(1); COLO. REV. STAT. § 38-12-507(1)(e); CONN. GEN. STAT. § 47a-13(a)(1); Dougherty v. Taylor & Norton Co., 63 S.E. 928, 929 (Ga. Ct. App. 1909); IOWA CODE § 562A.23(1)(a); LA. CODE CIV. PROC. ANN. art. 2694; MSU COLLEGE OF LAW, A PRACTICAL GUIDE FOR TENANTS & LANDLORDS 27–28 (2021); MINN. STAT. § 504B.425(c); NEB. REV. STAT. § 76-1427(1)(a); Marini v. Ireland, 265 A.2d 526; Jackson v. Rivera, 65 Misc.2d
as to the parameters of this method. Some frameworks include a cap on the amount a tenant can deduct after repairing a defect, either based on a specified monetary amount or the amount a tenant pays for rent. Other states do not recognize a cap at all. These approaches can be organized into five basic categories, although there are nuances within each that are outlined below. These categories are as follows: those with specified monetary caps, those with specified rent-based caps, those with no repair and deduct provision, those without a specified repair and deduct cap for limited services only, and those without a specified repair and deduct cap no matter the type of services involved.

A. States with Specified Monetary Caps

A specified monetary cap for the repair and deduct remedy is one that enumerates an explicit monetary amount, such as one-hundred dollars ($100.00). Due to Oklahoma’s recent amendment to the Residential Landlord and Tenant Act, there are currently only two states that continue to specify a purely monetary cap for their repair and deduct provisions: Rhode Island and Hawaii. Rhode Island’s repair and deduct statute is similar to the prior Oklahoma version of the repair and deduct method. It conveys that, if a landlord breaches the implied warranty of habitability and fails to comply within twenty days after receiving notice of the condition, the tenant may repair the defect and deduct the cost of doing so if the cost is “less than one hundred twenty-five dollars ($125.00) . . . .” Hawaii’s structure is more complicated; it specifies a five-hundred dollar ($500.00) cap only if the tenant chooses to repair the defect immediately. However, if the tenant first submits to the landlord estimates from two workers and then has the repair completed by the worker who gave the lower estimate, a rent-based cap applies. The specified monetary cap approach is obviously unpopular among the states, which is likely due to its inability to adapt as inflation diminishes purchasing power over time, as discussed in-full below.

B. States with Specified Rent-Based Caps

Rent-based caps are those that specify that a tenant may deduct the cost of repairs up to an amount derived from their monthly rental payment. Currently, twenty-one

468; N.D. CENT. CODE § 47-16-13(1); OR. REV. STAT. § 90.365(1)(a); Pugh v. Holmes, 405 A.2d 897; TENN. CODE ANN. § 66-28-502(a)(1)(A); OKLA. STAT. tit. 41, § 121(B) (2022).
157. See 34 R.I. GEN. LAWS § 34-18-30(a); CAL. CIVIL CODE § 1942(a); ALASKA STAT. § 34.03.180(a)(1).
158. 34 R.I. GEN. LAWS § 34-18-30(a).
159. See, e.g., CAL. CIVIL CODE § 1942(a).
160. See, e.g., COLO. REV. STAT. § 38-12-507(1)(c).
161. See infra Part IV.
162. HAW. REV. STAT. § 521-64(b)(1)-(2).
163. CAL. CIVIL CODE § 1942(a).
164. ALA. CODE § 35-9A-404(b).
165. ALASKA STAT. § 34.03.180(a)(1).
166. COLO. REV. STAT. § 38-12-507(1)(c).
167. 34 R.I. GEN. LAWS § 34-18-30(a); HAW. REV. STAT. § 521-64(b)(1)-(2).
168. See 34 R.I. GEN. LAWS § 34-18-30(a); OKLA. STAT. tit. 41, § 121(B) (1978) (amended 2022).
169. 34 R.I. GEN. LAWS § 34-18-30(a).
170. HAW. REV. STAT. § 521-64(b)(1)-(2).
172. See infra Section V.A.
173. See CAL. CIVIL CODE § 1942(a).
These states include California, Delaware, Hawaii, Illinois, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, South Dakota, Pennsylvania, Texas, Utah, Vermont, Virginia, and Washington. States employ this method in different ways, with caps based on a fraction of monthly rent, a single month’s rent, or multiple months’ rent. Vermont alone sets the cap at one-half of the monthly rent amount. California, Montana, and South Dakota institute a cap equal to one-month’s rent. As explained above, this is the newly adopted framework in Oklahoma. California also specifies that the repair and deduct remedy is only available twice within a twelve-month period. South Dakota further specifies that if the repairs cost more than one month’s rent, the tenant may withhold rent payment and deposit the money into a separate bank account until the account accumulates enough money for the tenant to make the repairs. If the landlord ultimately makes the repairs, the account funds will be released to the landlord. Utah and Washington include a cap based on the amount of two months’ rent. Massachusetts permits tenants to deduct the amount of a repair they made, so long as the amount does not exceed four months’ rent within a twelve-month period, or the duration of tenancy, whichever is shorter. Similarly, the Pennsylvania Supreme Court has stated that “[r]epairs . . . cannot exceed . . . the amount of rent owed for the term of the lease.”

202. Id.
The remaining, above-listed states take a hybrid approach between the specified monetary cap and the rent-based cap by including references both to an explicit dollar amount and monthly rent. For example, Illinois allows tenants to repair conditions and then deduct the amount as long as the cost does not exceed five-hundred dollars ($500.00) or “one-half of the monthly rent,” whichever is less. Hawaii permits a tenant to deduct the price of a repair, up to the greater of five-hundred dollars ($500.00) or one-month’s rent, but only where the tenant submits to the landlord two repair estimates and has the work completed by the worker who provided the lesser estimate. Kentucky’s statute allows for a deduction of one-hundred dollars ($100.00) or one-half of one month’s rent, whichever is more. Similarly, Texas’ repair and deduct statute permits a tenant to repair the defect and then deduct the cost of repair from rent up to the amount of five-hundred dollars ($500.00) or one-month’s rent, whichever is greater. Meanwhile, Missouri’s approach is more complicated; its repair and deduct statute allows tenants to repair a defect and subtract the cost of repair in an amount up to the greater of three-hundred dollars ($300.00) or one-half of the monthly rent, but the amount cannot exceed one-month’s rent.

C. States with No Repair and Deduct Provision

There are several states which do not recognize repair and deduct as a remedy at all. Alabama, Arkansas, the District of Columbia, Florida, Idaho, Indiana, Kansas, Maryland, New Hampshire, New Mexico, North Carolina, Ohio, South Carolina, West Virginia, Wisconsin, and Wyoming each lack a repair and deduct provision in their statutes, and their courts have similarly failed to identify this remedy.

These states instead identify other remedies for a landlord’s breach of the implied warranty of habitability.
example, permit tenants to recover damages based on the reduction in the unit’s fair rental value due to the breach. Arkansas stipulates that a tenant’s sole solution is to terminate the lease and receive a refund of the security deposit. Florida allows a tenant to stop paying rent and use the breach as a full defense in possessory actions based on nonpayment of rent filed by his landlord. Idaho and Indiana permit a tenant to file suit against a landlord that breaches the implied warranty of habitability seeking damages and specific performance or injunctive relief, respectively. Kansas allows tenants the option to terminate the lease or sue for damages and an injunction. Maryland stipulates that tenants whose landlords breach the implied warranty of habitability may use a rent escrow action to pay rent into court instead of paying it to her landlord, or, alternatively, to refuse to pay rent outright and use the breach as an affirmative defense in a subsequent action filed by his landlord. New Hampshire disallows a landlord to maintain an action based on a tenant’s nonpayment of rent if the landlord has breached the implied warranty of habitability. Instead, a court will permit the tenant to pay rent into court until the defect is fixed, at which time the landlord will receive the rent payments, which may be adjusted according to the fair rent value of the unit while the defect existed.

New Mexico allows a tenant to abate the daily rental amount after he notified his landlord of the defect until the defect is remedied. Ohio sets out three options for tenants: (1) deposit the rent with the court instead of the landlord, (2) seek an order mandating that the landlord repairs the defect, or (3) terminate the lease. Wisconsin authorizes both abatement of rent and removal from the premises without liability for rent accrued after the date that the premises became uninhabitable. Wyoming directs tenants to serve their landlord with a “notice to repair or correct condition.” If this fails to resolve the issue, a tenant may bring a civil action in court, and the court will accord damages to the tenant and order the landlord to repair the defect or, if necessary, terminate the rental agreement.

D. States without Specified Caps for Limited Services Only

States like Alaska, Arizona, Connecticut, Iowa, Nebraska, Oregon, and Tennessee allow a tenant to cure a defect by first obtaining services and then

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231. FLA. STAT. § 83.60(b).
232. IDAHO CODE § 6-320(a)(6); IND. CODE § 32-31-8-6(d)(2).
233. KAN. STAT. ANN. §58-2559.
234. MD. CODE ANN., REAL PROP. § 8-211(i).
236. Id.
237. N.M. STAT. ANN. § 47-8-27.2.
238. OHI0 REV. CODE ANN. § 5321.07(B)(1)–(2).
239. WIS. STAT. § 704.07(a).
240. WYO. STAT. ANN. § 1-21-1206(b)–(c).
241. Id.
242 ALASKA STAT. § 34.03.180(a)(1).
243. ARIZ. REV. STAT. ANN. § 33-1364(A)(1).
244. CONN. GEN. STAT. § 47a-13(a)(1).
245. IOWA CODE § 562A.23(1)(a).
246. NEB. REV. STAT. § 76-1427(1)(a).
247. OR. REV. STAT. § 90.365(1)(a).
substracting the “actual” and “reasonable” costs from rent.\footnote{See ALASKA STAT. § 34.03.180(a)(1); ARIZ. REV. STAT. ANN. § 33-1364(A)(1); CONN. GEN. STAT. § 47a-13(a)(1); IOWA CODE § 562A.23(1)(a); NEB. REV. STAT. § 76-1427(1)(a); OR. REV. STAT. § 90.365(1)(a); TENN. CODE ANN. § 66-28-502(a)(1)(A).} Here, the statutes explicitly permit the tenant to deduct the “actual” costs from rent and do not instate a cap.\footnote{See infra Part V.} The caveat, though, is that the lack of cap is limited to certain types of services.\footnote{See infra Part V.} Curiously, Oklahoma’s repair and deduct statute includes such a provision in addition to its general rent-based cap.\footnote{See infra Part V.} States differ as to the types of services covered by this remedy.\footnote{See infra Part V.} Most of these states’ statutes include hot water, heat, and running water, as well as the general category of “essential services,” and leave open the question of what qualifies as “essential services.” For example, Alaska allows a tenant to procure “hot water, running water, heat, sanitary facilities, and essential services . . . .” Arizona, Iowa, and Nebraska also list “hot water, running water, heat,” and “essential services,” and Arizona’s statute additionally mentions air-conditioning.\footnote{See infra Part V.} Connecticut’s statute includes “heat, running water, hot water, electricity, gas or other essential service . . . .” Oregon and Tennessee simply state that a tenant may obtain essential services and do not elaborate further.\footnote{See infra Part V.}

E. States without Specified Caps No Matter the Type of Service Involved

States that do not impose a specified cap leave open the amount that a tenant may deduct when utilizing the repair and deduct method instead of enumerating a maximum deduction amount, without regard to which type of services are involved.\footnote{Compare CONN. GEN. STAT. § 47a-13(a)(1) with ARIZ. REV. STAT. ANN. § 33-1364(A)(1).} This framework does not suffer from the drawbacks inherent in the other methods: Legislators need not periodically adjust it with inflation, it does not promote inequity based on tenants’ socioeconomic status, it does not place an undue burden on tenants, and it addresses harmful conditions without limitations based on the type of service involved.\footnote{Compare CONN. GEN. STAT. § 47a-13(a)(1); IOWA CODE § 562A.23(1)(a); NEB. REV. STAT. § 76-1427(1)(a); OR. REV. STAT. § 90.365(1)(a); TENN. CODE ANN. § 66-28-502(a)(1)(A).} For these reasons—which are explained in detail below—Ohio should adopt a statutory structure that does not place any specified cap on the amount a tenant may subtract from rental payments when utilizing the repair and deduct method. Doing so would necessitate the most practical outcome: a tenant is simply permitted to deduct the cost of the repair.\footnote{Compare CONN. GEN. STAT. § 47a-13(a)(1); IOWA CODE § 562A.23(1)(a); NEB. REV. STAT. § 76-1427(1)(a); OR. REV. STAT. § 90.365(1)(a); TENN. CODE ANN. § 66-28-502(a)(1)(A).}
States that employ this type of scheme include Colorado,\textsuperscript{263} Georgia,\textsuperscript{264} Louisiana,\textsuperscript{265} Michigan,\textsuperscript{266} Minnesota,\textsuperscript{267} New Jersey,\textsuperscript{268} New York,\textsuperscript{269} and North Dakota.\textsuperscript{270} Although these states each omit a repair and deduct cap, they do so with varying degrees of specificity.\textsuperscript{271} For example, Colorado’s statute regarding the repair and deduct method states that “the tenant may deduct from one or more rent payments the cost of repairing or remedying a condition that is the basis of a breach of the warranty of habitability . . . .”\textsuperscript{272} Colorado’s language is clear: There is no arbitrary cap. Rather, the cost of repairing the defect itself serves as the amount that a tenant may deduct.\textsuperscript{273} Moreover, Colorado’s language explicitly rejects a rent-based cap by allowing a deduction from “one or more rent payments.”\textsuperscript{274} Minnesota’s repair and deduct statute is less clear on this point, stating only that, upon a court’s order, a residential tenant may remedy a defect and “deduct the cost from rent.”\textsuperscript{275} North Dakota’s statute is similar, allowing a tenant to repair the condition and deduct “the expense of such repair from the rent.”\textsuperscript{276} Michigan State University College of Law’s “Practical Guide for Tenants and Landlords” instructs a tenant to “pay for the repair and deduct the cost from the rent” in the event that the landlord fails to cure a defect.\textsuperscript{277}

On the other end of the spectrum lies states that have developed the repair and deduct remedy’s parameters through case law in lieu of legislative action; namely, Georgia, New Jersey, and New York.\textsuperscript{278} For example, in Dougherty v. Taylor & Norton Co., the Court of Appeals of Georgia held that a tenant had the right to repair a broken window and then “set off as against the rent” the amount spent by the tenant in making the repair.\textsuperscript{279} The court’s judgment allowed the tenant to deduct the entire amount of his repair and gave no indication of a cap associated with the deduction.\textsuperscript{280} Yet Dougherty is significantly less clear than Colorado’s approach.\textsuperscript{281} Indeed, it is unclear whether the Dougherty court endorsed a no-cap framework generally, or simply permitted the tenant to deduct the amount of his repair under the specific circumstances of the case, such as the fact that the cost of the repair was less than one month’s rent.\textsuperscript{282} Secondary sources do not clear up this confusion, stating only that the “cost must be reasonable.”\textsuperscript{283} Companably, in Jackson v. Rivera, the Civil Court for the City of New York held that “a tenant may make repairs and deduct

\begin{thebibliography}{9}
\bibitem{263} COLO. REV. STAT. § 38-12-507(1)(e).
\bibitem{265} LA. CODE CIV. PROC. ANN. art. 2694.
\bibitem{266} MSU COLLEGE OF LAW, A PRACTICAL GUIDE FOR TENANTS & LANDLORDS 27–28 (2021).
\bibitem{267} MINN. STAT. § 504B.425(c). Minnesota’s statute requires a court to order a tenant to exercise the repair and deduct method, \textit{id.}, which undermines the practical effectiveness of the repair and deduct remedy, as argued in Part V. \textit{See infra} Section V.C.
\bibitem{268} Marini, 265 A.2d 526.
\bibitem{269} Jackson, 65 Misc.2d 468.
\bibitem{270} N.D. CENT. CODE § 47-16-13(1).
\bibitem{272} COLO. REV. STAT. § 38-12-507(1)(e).
\bibitem{273} See COLO. REV. STAT. § 38-12-507(1)(e).
\bibitem{274} COLO. REV. STAT. § 38-12-507(1)(e) (emphasis added).
\bibitem{275} MINN. STAT. § 504B.425(c).
\bibitem{276} N.D. CENT. CODE § 47-16-13(1).
\bibitem{277} MSU COLLEGE OF LAW, A PRACTICAL GUIDE FOR TENANTS & LANDLORDS 27–28 (2021).
\bibitem{278} Dougherty, 63 S.E. 928; Marini, 265 A.2d 526; Jackson, 65 Misc.2d 468.
\bibitem{279} Dougherty, 63 S.E. at 928–29.
\bibitem{280} \textit{Id.} at 929–30.
\bibitem{281} See COLO. REV. STAT. § 38-12-507(1)(e); Dougherty, 63 S.E. 928.
\bibitem{282} Dougherty, 63 S.E. at 930.
\bibitem{283} My Landlord Failed to Make Repairs. Now What?, supra note 259.
\end{thebibliography}
their reasonable cost from rent” in instances where a landlord breaches the implied warranty of habitability, creating an emergency, and refuses to make the repairs.\footnote{284} Again, the court does not impose any cap on the tenant’s deduction,\footnote{285} but the rule is less clear than a hard-and-fast statutory provision outlining the repair and deduct method.\footnote{286}

Due to the particularity of Colorado’s framework, it will likely be the easiest for courts to interpret and apply. Moreover, the language fully informs tenants of their rights without ambiguity that a layperson might misinterpret to their detriment. These factors might, and should, encourage other states to adopt the Colorado statute’s language. Specifically, Oklahoma should implement the Colorado framework, which recognizes the repair and deduct method, rejects a deduction cap for tenants who exercise this remedy, and does so with the specificity necessary to guide courts and minimize confusion for tenants.\footnote{287}

\section{V. Oklahoma Should Implement a Repair and Deduct Framework Without a Specified Cap Because It Promotes Equity and Ease for Lawmakers, Tenants, and Landlords}

Aside from the clear-cut language of Colorado’s repair and deduct provision which makes it desirable in form, there are multiple compelling factors that make the provision desirable in substance as well. First, because the framework makes no reference to a specific dollar amount, there is no need for legislators to periodically amend the provision to account for inflation.\footnote{288} Second, because the framework does not tie the cap to rental amount, tenants renting cheaper properties will not suffer inequitable consequences.\footnote{289} Third, because the framework includes a repair and deduct provision to begin with, tenants will not be forced to move out or seek civil remedies in the event that their dwelling falls into disrepair and their landlord fails or outright refuses to remedy the issue.\footnote{290} Additionally, a no-cap framework that does not place limits on its use based on the condition a tenant seeks to remedy will ensure that all harmful conditions are eliminated.\footnote{291} A framework that includes the repair and deduct method and does not institute a cap—rent-based or otherwise—will promote equity for tenants and benefit landlords as well.\footnote{292}

\begin{itemize}
\item \footnote{284} Jackson, 65 Misc.2d 468, 471.
\item \footnote{285} Id.
\item \footnote{286} See COLO. REV. STAT. § 38-12-507(1)(e); Jackson, 65 Misc.2d 468.
\item \footnote{287} Id.
\item \footnote{288} Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4.
\item \footnote{289} See supra note 5.
\item \footnote{290} See ARK. CODE ANN. § 18-17-502 (termination of lease); IDAHO CODE § 6-320(a)(6) (civil action against landlord for damages, specific performance, or injunctive relief); N.H. REV. STAT. ANN. § 540:13-d (defense against action for nonpayment of rent); MD. CODE ANN., REAL PROP. § 8-211(i) (rent escrow action).
\item \footnote{291} See ALASKA STAT. § 34.03.180(a)(1).
\item \footnote{292} Teller v. McCoy, 253 S.E.2d 114 (W. Va. 1978) (Neely, J., concurring in part, dissenting in part) (noting that, “[a] repair and deduct remedy provides a simple and expeditious means of alleviating a breach of an implied warranty of habitability. It is not unjust to the landlord, since he must be given prior notice of the defect and an opportunity to repair it before the tenant can do so.”).
\end{itemize}
A. Specified Monetary Caps Concerning the Repair and Deduct Method Are Undesirable Because Legislators Must Continually Adjust Them for Inflation

On a practical level, inflation is the well-known economic phenomenon that prices of goods and services rise over time. On a more technical level, inflation tracks the rate of change of a given price index—which measures the average costs of a bundle of goods and services—during a specified period. The overall increase in price levels for goods and services decreases money’s purchasing power; in other terms, due to inflation, money is worth less. This concept explains why the amount enumerated in the former Oklahoma Residential Landlord and Tenant Act—$100.00—is now worth over $400.00 today. Consequently, a repair costing a tenant $100.00 in 1978 would cost a tenant around $400.00 in today’s money. Legislators and policymakers recognized this inconsistency, and the Oklahoma Residential Landlord and Tenant Act was amended to eliminate the antiquated deduction cap. Oklahoma legislators specifically took the inflation issue into account when making this change. Members of Representative Bush’s study suggested tying the deduction cap to an amount based on rental price for the explicit reason of avoiding a repeat of the same predicament down the road as purchasing power further decreases due to inflation.

The change to the repair and deduct cap’s structure was a sensible one, as tying the deduction amount to rent eliminates the need for adjustment to the statute in the future. Common sense illustrates that any specified dollar amount will purchase less in the future, and any laws that enumerate a dollar amount must therefore be changed to reflect the decrease in purchasing power. Legal scholars have observed that “inflation reduces the real value of any dollar magnitude contained in private contracts or public laws.” Thus, if dollar amounts are specified within statutes, “the only truly viable solution appears to be the brutal chore of piecemeal amendment.”

293. Board of Governors of the Federal Reserve System, What is Inflation and How Does the Federal Reserve Evaluate Changes in the Rate of Inflation?, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (Sept. 9, 2016), https://www.federalreserve.gov/faqs/economy_14_419.htm#:~:text=Inflation%20is%20the%20increase%20in,even%20several%20products%20or%20services.
296. OKLA. STAT. tit. 41, § 121(B) (1978) (amended 2022); Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4.
297. See Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4.
298. Interim Study, supra note 5 (statement of Anthony Moore, Representative, Oklahoma House of Representatives).
299. See H.B. 3409, 58th Leg., Reg. Sess. (Okla. 2022); Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4.
300. Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4.
301. Interim Study, supra note 5 (statement of Eric Hallett, Statewide Coordinator of Housing Advocacy, Legal Aid Services of Oklahoma) (note that Eric Hallett made this statement in his individual capacity and not on behalf of Legal Aid Services of Oklahoma); Kolko, supra note 171.
303. Chen, supra note 20, at 1375, 1386, 1434.
304. Id. at 1386.
305. Chen, supra note 20, at 1434.
This undesirable outcome has been observed with regard to emotional distress damages\(^{306}\) and medical malpractice caps.\(^{307}\) A recent article by Armen H. Merjian, one of the nation’s leading civil rights attorneys, entitled “Nothing ‘Garden Variety’ About It: Manifest Error and Gross Devaluation in the Assessment of Emotional Distress Damages,” explains that courts continue to limit emotional distress damages to amounts ranging from $5,000 to $35,000, despite the fact that these amounts are outdated due to inflation.\(^{308}\) Similarly, a Comment entitled “A Critical Misdiagnosis: Re-Evaluating Louisiana’s Medical Malpractice Cap,” took issue with the Louisiana Medical Malpractice Act’s $500,000 recovery cap.\(^{309}\) The author recognized that “even if the cap were raised to meet inflation, this would merely downplay the problem . . . this ‘fix as we go’ approach would temporarily treat a recurring problem . . . . A permanent cure to the problem may be achieved through a repeal of the Act’s cap on damages . . . .”\(^{310}\)

Given the fact that Oklahoma’s $100.00 cap remained untouched for more than forty years,\(^{311}\) it is likely that amending the law to account for inflation was not exactly at the forefront of legislators’ minds; understandably so, as there are countless other efforts that deserve their time and energy. But this does not alleviate the fact that Oklahoma tenants have suffered from this oversight, as it left them with the lowest repair and deduct cap in the country.\(^{312}\) Thus, it is admirable that members of Representative Bush’s study and Oklahoma legislators have attempted to eliminate this issue from happening in the future.\(^{313}\) Nonetheless, the solution they opted for —tying the deduction amount to monthly rental price—comes with issues of its own.

B. A Specified Rent-Based Cap Regarding the Repair and Deduct Method Results in Inequity for Low-Income Tenants

The principal flaw in basing the repair and deduct cap on the price of a tenant’s rent is that tenants who pay less in rent will inevitably have a lower cap and thus a lower amount that they are permitted to deduct after repairing a defect.\(^{314}\) This drawback was acknowledged during Representative Bush’s interim study,\(^{315}\) but ultimately the enacted law fails to accommodate for this unfortunate result.\(^{316}\) Rent prices vary significantly across Oklahoma.\(^{317}\) Across counties, the fair market rent\(^{318}\) for two-bedroom housing

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308. Merjian, supra note 306, at 691, 698, 714.
310. Id. at 489.
312. Interim Study, supra note 5 (statement of Katie Dilks, Executive Director, Oklahoma Access to Justice Foundation).
313. Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4.
314. Interim Study, supra note 5 (statement of Eric Hallett, Statewide Coordinator of Housing Advocacy, Legal Aid Services of Oklahoma) (note that Eric Hallett made this statement in his individual capacity and not on behalf of Legal Aid Services of Oklahoma).
315. Id. (statement of Eric Hallett, Statewide Coordinator of Housing Advocacy, Legal Aid Services of Oklahoma) (note that Eric Hallett made this statement in his individual capacity and not on behalf of Legal Aid Services of Oklahoma).
316. See OKLA. STAT. tit. 41, § 121(B) (2022).
318. Id. at 16 (defining “fair market rent” as “typically the 40th percentile of gross rents for standard rental units of recent movers.”).
ranges from $797 to $1,016.\footnote{Id. at 206–09.} Because those with a lower socioeconomic status generally live in rental properties with the lowest monthly rental costs, they are at risk of ultimately suffering the harshest consequences.\footnote{See supra note 5.} This risk becomes more troubling when one considers the fact that low-income rental units have more severe repair needs in comparison to middle and upper-income rental units.\footnote{Id. at 3.} In fact, in 2017, low-income households “accounted for a slight majority of renter households with repair needs (51.8 percent) and a disproportionate share of aggregate repair costs (56.7 percent).”\footnote{Id. at 10.} The Oklahoma law as it currently stands disincentivizes low-income tenants from making repairs due to the increased likelihood that the repairs will ultimately cost more than a month’s rent.\footnote{Id. at 10–11 (finding that low-income households in single-family, older units “had the highest estimated repair costs among renter-occupied units” and low-income households in single-family, moderately aged units “had relatively high estimated repair costs”).} Similarly designed laws suggest that, if there is a remainder, tenants must personally absorb it.\footnote{Mass. Gen. Laws ch. 111, § 127L (specifying that a landlord may recover from the tenant any amount that the tenant deducted from the rent in excess of the cap imposed by the statute).}

When non-rent-based caps exist as an option, the current law cannot be justified even by a good-faith argument that lower-income tenants would not be able to afford to make a repair in the first place. It is simply unnecessary to make this potentially harmful assumption when there are viable frameworks that instate no cap at all. Moreover, tenants might be more likely to allocate their money to repairs if it were guaranteed that they would be able to recoup these costs in full via alleviated rental prices during the following month(s).

Besides the practical equity dilemma as a result of the rent-based cap, this framework is also vulnerable to interpretive issues that could further aggravate the harm suffered by low-income tenants. For example, the court in \textit{Green v. Superior Court} analyzed California’s repair and deduct provision, which, like Oklahoma’s, permits a tenant to deduct an amount up to one month’s rent after repairing defects in their unit.\footnote{Green v. Superior Court, 517 P.2d 1168 (Cal. App. Dep’t Super. Ct. 1974); Cal. Civil Code § 1942(a) (1872).} The court put considerable stock into this cap and held that “in the most serious instances of deterioration, when the costs of repair are at all significant, [California’s repair and deduct provision] does not provide, and could not have been designed as, a viable solution.”\footnote{Green v. Superior Court, 517 P.2d 1168, 1177–78 (Cal. App. Dep’t Super. Ct. 1974).} This interpretation undercuts the function of the implied warranty of habitability. As outlined above, breaches of the implied warranty of habitability explicitly involve defects of a nature that could fairly be described as serious (lack of light,\footnote{See, e.g., Edie v. Gray, 121 P.3d 516 (Mont. 2005).} water,\footnote{See, e.g., Belanger v. Mulholland, 30 A.3d 836 (Me. 2011).} power,\footnote{See, e.g., Chibs v. Fisher, 960 A.2d 588 (D.C. 2008).} adequate plumbing,\footnote{See, e.g., Krausi v. Fife, 120 A.D. 490 (N.Y. App. Div. 1907).} as well as the presence of mold\footnote{See, e.g., Geels v. Dunbar, 812 N.E.2d 857 (Ind. Ct. App. 2004).} and vermin.\footnote{See, e.g., Kolb v. DeVille I Props., L.L.C., 326 S.W.3d 896 (Mo. Ct. App. 2010).} A repair and deduct framework that can be (and has been\footnote{Green v. Superior Court, 517 P.2d 1168, 1177–78 (Cal. App. Dep’t Super. Ct. 1974).}) construed in a way that excludes serious defects is harmful to the underlying policy goals that the implied warranty of habitability was designed to combat and the repair and deduct method was designed to cure. Shifting Oklahoma’s framework from one that instates a rent-based cap, to one that instates no cap at
all, combats the disproportionate negative effects of a breach of the implied warranty of habitability for the most vulnerable tenants.

C. The Absence of a Repair and Deduct Provision Puts an Undue Burden on Tenants

Without the availability of the repair and deduct method, tenants are forced to utilize other means to remedy a breach of the implied warranty of habitability.334 As discussed above,335 some of the most common alternatives to the repair and deduct method involve terminating the lease and moving, suing the landlord for damages, specific performance, and injunctive relief, and depositing the rental payment with the court until the defect is fixed.336 Each of these alternatives forces tenants to bear a heavy burden.

For instance, moving comes with high costs.337 The national average cost of a move in May 2022 was $427338 and hiring movers for a short distance move currently ranges from $300 to $6,900.339 If a tenant chooses to move themselves to cut the costs of doing so, they must expend another precious commodity: their time. In Oklahoma, the minimum wage is $7.25.340 In order to afford a two-bedroom rental home at the statewide average fair market rent—$936—2.5 full-time minimum-wage jobs are necessary per household.341 For a one-bedroom rental home, 2.0 full-time minimum wage jobs are necessary per household.342 This translates to ninety-nine and seventy-nine hours of minimum-wage work per week, respectively.343 Even in the five Oklahoma counties with the highest estimated average hourly renter wage, tenants must work an average of roughly twenty-eight hours a week to afford rent for a two-bedroom apartment.344 Thus, for tenants working near-minimum-wage jobs to afford their next rental unit, taking a few days off of work to move can mean the difference between being able or unable to pay rent in the future. Moving also has consequences that extend beyond money.345 Frequent moving is...

335. See supra Section IV.C.
338. Dittmann Tracey, supra note 337.
339. Ogletree & Cellucci, supra note 337.
340. NAT’L LOW INCOME HOUS. COAL., supra note 317, at 205.
341. Id. at 205 (note that “[a]ffordable rents represent the generally accepted standard of spending not more than 30% of gross income on gross housing costs”). Id. at 206.
342. Id. at 205.
343. NAT’L LOW INCOME HOUS. COAL., supra note 317, at 205. Note that “[a]ffordable rents represent the generally accepted standard of spending not more than 30% of gross income on gross housing costs.” Id.
344. NAT’L LOW INCOME HOUS. COAL., supra note 317, at 206–09. The five counties with the highest estimated hourly mean renter wage are: Grant County ($27.85), Kingfisher County ($21.20), Texas County ($20.76); Dewey County ($20.66); and Beaver County ($20.55). Id. The average of these amounts is roughly $22.20. Id. The mean two-bedroom rental price in these counties is: $811.00 (Grant County), $837.00 (Kingfisher County), $871.00 (Texas County), $797.00 (Dewey County), and $797.00 (Beaver County). Id. The average of these amounts is roughly $822.60. Id. To afford a two-bedroom apartment without expending over 30% of income on housing costs, a household must work roughly 28.5 hours of work per week. (Monthly hours: $22.6/($22.20 x .3) = 123.49/126. Weekly hours: (123.49/126 x 12)/52 = 28.497).
associated with behavioral, emotional, and educational issues in children,\textsuperscript{346} as well as heightened stress levels in adults.\textsuperscript{347}

As discussed above,\textsuperscript{348} time is a precious asset that many renters cannot give up; thus, the option of filing suit to recover damages from their landlord is not a feasible one for many tenants. Further, given that 63 percent of single-parent households nationwide are renters,\textsuperscript{349} factors like lack of childcare may deter a tenant from using the judicial system to seek a remedy from their landlord. Additionally, the option to pay rent into a court does nothing to ease a tenant’s financial obligation or improve the condition of his unit in the short-term. A tenant will continue to live in uninhabitable conditions while retaining the obligation to pay rent in at least some capacity.\textsuperscript{350} Even if the landlord does not yet receive the money, it is still leaving the tenant’s pocket.\textsuperscript{351}

Ultimately, implementing a repair and deduct provision alleviates a variety of monetary burdens on tenants; thus, it is laudable that Oklahoma has long been committed to this remedy,\textsuperscript{352} and any future changes to the Oklahoma Residential Landlord Tenant Act should retain this method as a tool to assist the 34 percent of Oklahoma households that rent.\textsuperscript{353}

\textbf{D. A Repair and Deduct Method that Limits the No-Cap Framework to Certain Services May Fail to Address Other Dire Situations}

A no-cap repair and deduct remedy with limitations based on the type of service involved may fail to address conditions that harm tenants.\textsuperscript{354} Even though states that utilize this method include a general category of “essential services,” such a category is vague and may leave tenants confused regarding what it encompasses.\textsuperscript{355} Further, although several states that use this framework specifically refer to heat, running water, and hot water, no state specifically accounts for conditions like pests and mold, even though these conditions contribute to considerable health issues in individuals.\textsuperscript{356} For example, Centers for Disease Control and Prevention and the United States Environmental Protection Agency characterize bed bugs as “a pest of significant public health importance.”\textsuperscript{357} Bed bug bites can cause infections which effect the skin, including ecthyma, impetigo, and lymphangiitis.\textsuperscript{358} Individuals may also suffer from allergic reactions to bed bug bites, including, although rare, anaphylaxis.\textsuperscript{359} Also relevant are the negative mental health consequences of

\textsuperscript{346} Id.
\textsuperscript{347} SWNS, Many Claim This Event is More Stressful Than Divorce or Having Kids, N.Y. POST (Sept. 30, 2020), https://nypost.com/2020/09/30/some-people-claim-this-is-more-stressful-than-marriage-divorce-and-even-having-kids/ (reporting on a study in which “45 percent of respondents said moving is by far the most stressful event in life.”).
\textsuperscript{348} See supra Part V.C.
\textsuperscript{349} JINT CTTR. FOR HOUS. STUDS. OF HARY. UNIV., supra note 57, at 12.
\textsuperscript{350} See MD. CODE ANN., REAL PROP. § 8-211(i); N.H. REV. STAT. ANN. § 540:13-d.
\textsuperscript{351} See MD. CODE ANN., REAL PROP. § 8-211(i); N.H. REV. STAT. ANN. § 540:13-d.
\textsuperscript{352} See OKLA. (TERR.) STAT. §§ 863–64 (1903); COMP. OKLA. STAT. § 7371 (1921); OKLA. STAT. tit. 41, § 32 (1941) (amended 1978); OKLA. STAT. tit. 41, § 121(B) (1978) (amended 2022); H.B. 3409, 58th Leg., Reg. Sess. (Okla. 2022); OKLA. STAT. tit. 41, § 121(B) (2022).
\textsuperscript{353} NAT’L LOW INCOME HOUS. COAL., supra note 317, at 24.
\textsuperscript{354} See supra note 7.
\textsuperscript{355} ALASKA STAT. § 34.03.180(a)(1); ARIZ. REV. STAT. ANN. § 33-1364(A)(1); CTN. GEN. STAT. § 47a-13(a)(1); IOWA CODE § 562A.23(1)(a); NEB. REV. STAT. § 76-1427(1)(a).
\textsuperscript{356} ALASKA STAT. § 34.03.180(a)(1); ARIZ. REV. STAT. ANN. § 33-1364(A)(1); CTN. GEN. STAT. § 47a-13(a)(1); IOWA CODE § 562A.23(1)(a); NEB. REV. STAT. § 76-1427(1)(a); OR. REV. STAT. § 90.365(1)(a); TENN. CODE ANN. § 66-28-502(a)(1)(A).
\textsuperscript{357} CTRS. FOR DISEASE CONTROL AND PREVENTION & U.S. EPA, supra note 7, at 1.
\textsuperscript{358} Id. at 2.
\textsuperscript{359} Id.
living in an environment infested with bed bugs. 360 Cockroaches likewise pose significant health concerns due to their capacity to trigger allergies and asthma, particularly in children. 361 Moreover, rat and mice infestations in dwellings can result in the spread of disease, both directly and indirectly. 362 Hantavirus, leptospirosis, and rat-bite fever are some of the many diseases spread directly to humans by rodents. 363 The presence of mold in rental units is also cause for concern. 364 The World Health Organization “confirm[s] that occupants of damp, moldy buildings have an increased chance of respiratory problems, such as shortness of breath and worsening asthma.”365 Individuals may also suffer from other adverse reactions to mold, with symptoms ranging from eye irritation to skin rashes. 366

Implementing a no-cap framework without limitations based on the type of condition involved ensures that tenants are able to alleviate all harmful conditions present in their rental unit instead of being unnecessarily restricted in their exercise of the repair and deduct method.

E. A Framework That Includes the Repair and Deduct Remedy without a Specified Cap Best Mitigates Inequity and Balances the Landlord-Tenant Relationship

While the general idea of the repair and deduct method is—and should be—here to stay in Oklahoma, its internal parameters require further amendment. Specifically, the rent-based cap should be removed and replaced by a system without a cap, without regard to the type of services involved. As discussed above, Colorado’s repair and deduct statute implements this framework with unequivocal clarity, 368 and Oklahoma should do the same. By refusing to specify a cap, lawmakers could avoid the inflation issue associated with a specified monetary cap as well as combat the inequity and health issues associated with the rent-based cap and the limited cap, respectively. 370

As for the landlord’s interests, the repair and deduct method without a cap does not amount to a free-for-all for tenants. Several states that implement this framework recognize notice and timing requirements to ensure that landlords have the opportunity to learn about the defect and to repair it themselves before a tenant can exercise the repair and deduct remedy. 371 Some of these states require a tenant to give written notice of the breach to their landlord. 372 Several also force the tenant to wait a “reasonable time,” during which the landlord can cure the defect. 373 In sum, landlords are not forgotten by these laws.
An amendment to rid the Oklahoma repair and deduct provision of its cap could retain the current notice and timing requirements to protect landlords from surprise and allow them to exert control over their properties. To this point, West Virginia Supreme Court Justice Thomas Miller has remarked that, “[i]t is not unjust to the landlord, since he must be given prior notice of the defect and an opportunity to repair it before the tenant can do so. It hardly seems likely that the tenant would be extravagant in his repairs since it is his money that must be used initially.” On the other hand, a repair and deduct provision without a cap could give landlords the capability to engage in a more “hands off” approach if they so choose. Instead of coordinating repairs, a landlord could leave it to the tenant and avoid move-outs as a result of defects in the rental unit. This could be particularly useful for corporate landlords who generally own larger shares of rental units.

Aside from balancing equity within the tenant-landlord relationship, a repair and deduct remedy that does not include a cap has benefits that reach the entirety of society. Communities have an interest in furnishing tenants with adequate housing and giving them a means by which to maintain the adequacy of said housing, as inadequate housing is associated with chronic mental and physical health difficulties, as well as higher risks of injury. On an even larger scale, “[t]he public benefits engendered by new tenant remedies may well include reduced expenditures on courts, housing departments and administration, fire departments, health services and possibly police and social services.” Moreover, allowing tenants to be proactive could prevent houses from falling into disrepair over time, which commonly results in abandonment and potentially leads to a lower quality of life in the surrounding community.

VI. CONCLUSION

The most recent amendment to the Oklahoma Residential Landlord and Tenant Act reflects the Oklahoma Legislature’s willingness to advocate and act on behalf of tenants, and it is clear that the increase in the repair and deduct cap from $100.00 to one-month’s rent is a step in the right direction. Such legislation applies principles that have been integral in the development of the contemporary landlord-tenant relationship in the United States; the most elemental being the implied warranty of habitability.

Nonetheless, by examining other states, it is evident that there are a multitude of ways in which the implied warranty of habitability may be enforced. And by taking a closer look at the realities of the modern-day tenant, the deficiencies of the specified monetary, rent-based, and condition-limited caps become apparent. It is undesirable for a law to enumerate a dollar amount in light of inflation, and Oklahoma legislators were thoughtful in their decision to rid the repair and deduct statute of this issue. Beyond that,
the inequitable consequences for low-income tenants render a cap based on monthly rent undesirable, not only for tenants, but for communities.\textsuperscript{384} Moreover, the no-cap provision that limits use to specific conditions may result in health issues for tenants.\textsuperscript{385} Mitigating these negative effects on low-income tenants is especially imperative because “much of the available evidence indicates that policies intended to improve housing quality have the strongest positive returns for public health and neighborhood conditions when they target the most vulnerable households.”\textsuperscript{386}

Just as the deficiencies of the rent-based cap are illuminated, so are the advantages of a no-cap repair and deduct system. The inevitable consequences of inflation are avoided,\textsuperscript{387} and tenants are empowered with a broader sense of choice, which caters to their needs, ensures landlords will uphold their duty to maintain habitable rental units, and allows landlords to exert an appropriate amount of control over their property.\textsuperscript{388}

With over one-third of Oklahoma’s population being renters, the issue of landlord-tenant relations touches the lives of many.\textsuperscript{389} The implied warranty of habitability has laid the foundation for equalizing bargaining power between parties—where one stands to temporarily lose a portion of income and the other stands to lose their home. The repair and deduct method further promotes a balanced landlord-tenant relationship by placing a mechanism for solution into the tenant’s hands.\textsuperscript{391} A framework that retains the repair and deduct method but removes any reference to a cap—rent-based or otherwise—and does not institute condition-specific limits, solves practical problems for legislators,\textsuperscript{392} breaks the constraints imposed by a tenant’s financial situation,\textsuperscript{393} safeguards the health of individuals living in rental units,\textsuperscript{394} and is thus the most desirable means for affirming Oklahoma’s longstanding commitment to the repair and deduct method\textsuperscript{395} in a way that reflects today’s reality.

- Jacy Holbrook*

\textsuperscript{384} Dvirringi et al., supra note 377, at 10–11, 17 (finding that low-income households in single-family, older units “had the highest estimated repair costs among renter-occupied units” and low-income households in single-family, moderately aged units “had relatively high estimated repair costs”); supra Section V.B.

\textsuperscript{385} See supra note 7; supra Section V.D.

\textsuperscript{386} Dvirringi et al., supra note 377, at 17.

\textsuperscript{387} Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4; supra Section V.A.


\textsuperscript{389} Nat’l Low Income Hous. Coal., supra note 314, at 24.


\textsuperscript{392} Dunaway, supra note 2, § 48.75.

\textsuperscript{393} Governor Signs Landlord-Tenant Repair & Deduct Update Into Law, supra note 4; see, e.g., Colo. Rev. Stat. § 38-12-507(1)(c); supra Section V.A.

\textsuperscript{394} See supra note 5; supra Section V.B.


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