

# BANKER & TRADESMAN

THE REAL ESTATE, BANKING AND COMMERCIAL WEEKLY FOR MASSACHUSETTS

ESTABLISHED 1872

## Worlds Apart: Landlords Are From Neptune, Tenants From Jupiter

By Peter M. Malaguti

**L**ET'S FACE IT – LANDLORDS AND TENANTS ARE like cats and dogs, oil and water, Stalin and Trotsky, Simon Cowell and ... well, like Simon Cowell and just about anyone who values manners and compassion. Landlords and tenants just don't understand each other.

To tenants, landlords seem to fit one of two caricatures. First, there's the corpulent land baron who swallows up run-down tenements at dirt-cheap prices and treats the people who live there as a messy means of generating profits. There's also the landlord-knight who by day crusades off to a high-tech job, but by night dabbles in real estate as an investment or hobby. Tenants think landlords lack the time and inclination to tend to their basic needs.

Landlords also fit tenants into stereotypes. The first is the slovenly welfare recipient, always behind in rent and continuously producing children who are hard on property. Then, there's the flannel-wearing, alienated, overeducated, underachieving generation Xer who drinks caramel macchiatos, demands a perfect apartment and appears utterly incapable of making even the smallest repair himself. To landlords, tenants are profit-busting time wasters.

What is the cause of this mutual disdain? The answer may be found by examining the history and economics of landlord-tenant law.

### Law of the Land

Until about 1960, landlord-tenant law was more a product of medieval England than of industrial America. When landlord-tenant law was conceived, farming was the main economic activity and land was far more important than the buildings on it. The land supported the crops that fed tenants and landlords, provided the materials tenants used to build shelter and make clothing, and generated profits that allowed landlords to remain wealthy and politically empowered.



PETER M. MALAGUTI

*is a professor of law at the Massachusetts School of Law at Andover and a practicing attorney. He teaches landlord-tenant law, property, conveyancing and land-use regulation.*

There was no such thing as safe, habitable housing. If the tenant's home collapsed or burned, the skilled tenant simply rebuilt it with materials taken from the land. As long as the soil supported crops, livestock and timber, the tenant had all he needed.

Agrarian values dominated landlord-tenant law. The landlord's only duty was to deliver the land, and he remained immune from nearly all claims regarding the condition of structures. Under this doctrine, known as caveat emptor, the tenant took the premises "as is," with no promise that existing dwellings were safe or comfortable.

Caveat emptor suited an economy dominated by farming, but the industrial revolution eventually made it obsolete. Tenants stopped farming and started to work in factories. They eventually lost their handyman skills. As the primary focus of the economy shifted, so did tenants' primary concerns. No longer inter-

ested in living off the land, tenants instead sought safe, habitable housing. Today, the American standard of living requires heat, electricity, running water, dry quarters, flushing toilets, garbage removal and freedom from rodents and insects, essential services that tenants are rarely able to provide on their own.

While America's economy metamorphosed from agrarian to industrial, however, landlord-tenant law remained medieval. Not until about 1960 did legislators and courts recognize the need for a body of law based on a 20th century economy and modern living standards. And this recognition was truly an awakening; legislatures readily enacted protective housing laws, and the courts vigorously enforced them.

Most landlords were able to comply and remain profitable. But a few stood resolute in their worship of caveat emptor. When some retaliated against complaining tenants by raising rents, commencing evictions and shutting off heat and hot water, legislatures responded by passing even more protective laws. The result was the antithesis of caveat emptor: an extensive statutory framework devoted almost entirely to protecting tenants rather than landlords.

To tenants, the expansive legislation is proof that landlords are unwilling to provide the safe, clean housing they deserve. But to landlords, this is regulation run amok; the legal system has cast them as ogres and bound them in anti-business shackles. Landlords and tenants each view themselves as victims of the other.

While landlords have struggled to withdraw from a 500-year caveat emptor addiction, tenants have failed to show restraint when exercising their new-found legal rights. The new landlord-tenant laws are still in their infancy – 50 years barely registers on the 1,000-year spectrum of landlord-tenant law – and it will take time for landlords and tenants to assimilate into their new roles. But assimilate they will. Until then, landlords and tenants will continue to act as if they're each from different planets. ■

*Reprinted with permission of Banker & Tradesman.*

*This document may constitute advertising under the rules of the Supreme Judicial Court of Massachusetts.*