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# CRUSADING FOR THE HELPLESS OR BITING THE HAND THAT FEEDS? APPLYING LANDLORD- TENANT LAW TO RESIDENTS IN SHELTERS

*Matthew R. Hays\**

## INTRODUCTION

When a victim of domestic violence flees her abuser, she often has little choice but to turn to a shelter for refuge.<sup>1</sup> Such sanctuaries help distressed women by providing vital services that include counseling meetings, awareness programs, and living arrangements.<sup>2</sup> Despite the importance of the relationship between battered women and homeless shelters, however, the legal status of such relationships remains unclear. The shelter is certainly not a traditional landlord in the sense that it makes residents sign a lease and then hands over the keys without any further association. The victim is not the traditional tenant in that she needs far more than just a room—she needs the services and the community to help her escape the cycle of violence.

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1 These services help battered women rebuild their lives. See Gretchen P. Mullins, *The Battered Woman and Homelessness*, 3 J.L. & POL'Y 237, 250 (1994) ("The need for emergency housing and support services for battered women often remains the only real protection that society has to offer.").

2 In surveys, shelters are viewed as the most effective formal help service for battered women. See Merle H. Weiner, *From Dollars to Sense: A Critique of Government Funding for the Battered Women's Shelter Movement*, 9 LAW & INEQ. 185, 188 n.13 (1991) (comparing the perceived effectiveness of shelters with physicians, clergymen, district attorneys, police, lawyers, and social services agencies). One possible reason for the success of shelters is that they allow women to be completely removed from their abusive environments, helping them to slowly but certainly rebuild their lives without any negative influences. *Id.* at 192. Once they have separated from their abuser, women are free to focus on themselves and pursue their own goals. *Id.*

The shelter is not a hotel in the traditional sense either, and the victim is not a guest.

The nature of the relationship between the shelter and its residents is generally governed by state statutory law. However, rarely does a state statute address shelters directly. Instead, state courts must decide whether and how to apply landlord-tenant statutes to the shelter context. While some courts find that shelters are landlords, others do not. Furthermore, when disputes inevitably arise between shelters and their residents, the rights and remedies of the women are often an open legal question. At the very least, the overriding goal of the courts seems clear—to allow women to recover from their former abusers and become productive members of society.

How the residents of a shelter are categorized has immense implications for shelter operators.<sup>3</sup> If landlord-tenant law protects individual residents, shelters are unable to quickly evict problematic residents who threaten the success and safety of the shelters. Thus, although the legal status of shelter residents may be unclear, public policy considerations overwhelmingly warn against protecting problematic residents at the expense of the success of shelters.<sup>4</sup>

Nonetheless, the starting point for analyzing the relationship between shelters and their residents is landlord-tenant law. Accordingly, Part I of this Note surveys general landlord-tenant common and statutory law. Part II considers this framework in the context of shelters. Finally, Part III examines the relevant public policy arguments, concluding that applying landlord-tenant law to the context of shelters ultimately compromises their ability to help victims of abuse most effectively.

## I. THE GENERAL LANDLORD-TENANT RELATIONSHIP AND THE PROHIBITION ON SELF-HELP EVICTIONS

When women face eviction from their shelters, they most often sue the shelter and allege a landlord-tenant relationship to reap the legal benefits of such a relationship, which includes a prohibition on

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3 For an analysis of the impact of potentially violent women on shelter programs, see RESPECTING ACCURACY IN DOMESTIC ABUSE REPORTING, HAS VAWA DELIVERED ON ITS PROMISES TO WOMEN? 6–7 (2007), <http://www.mediadarad.org/docs/VAWA-Has-It-Delivered-on-Its-Promises-to-Women.pdf>.

4 The abusiveness of some women is often overlooked—most policymakers assume that women entering shelters are only victims. PHILIP W. COOK, ABUSED MEN 110 (1997); see also Linda Kelly, *Disabusing the Definition of Domestic Abuse: How Women Batter Men and the Role of the Feminist State*, 30 FLA. ST. U. L. REV. 791, 848–49 (2003) (discussing the development of the shelter movement and the need for effective measures to remedy habitual victims of domestic violence).

self-help evictions. Thus, it is important to first consider landlord-tenant law generally before applying it in the context of shelters.

A. *The Creation of the Landlord-Tenant Relationship*

Logically, before landlord-tenant law may apply to any situation, a landlord-tenant relationship must exist. Determining whether such a relationship has been created is thus the first step in analyzing both the relevant statutory framework and the common law. Most states have statutes defining both landlord and tenant, thus clarifying the necessary elements of the relationship.<sup>5</sup> Many of these statutes also define the residential premises to which they apply.<sup>6</sup>

Once it is established who is a landlord and who is a tenant, the next inquiry regards the type of agreement that created the landlord-tenant relationship. Courts have been willing to recognize both express and implied agreements as forming such relationships. An express agreement can be in the form of a lease, but may also be in any form granting an individual the right to use a premises.<sup>7</sup> Courts have been willing to find an implied landlord-tenant relationship when the acts of the parties are consistent with such a landlord-tenant relationship, even though there is no formal lease.<sup>8</sup> Generally, the relationship between the parties is the distinguishing feature of a

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5 See, e.g., KAN. STAT. ANN. § 58-2543(o) (2005) (“‘Tenant’ means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.”); OHIO REV. CODE ANN. § 5321.01(A) (LexisNexis 2004 & Supp. 2007) (“‘Tenant’ means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.”).

6 See, e.g., OHIO REV. CODE ANN. § 5321.01(C) (LexisNexis 2004 & Supp. 2007).

7 See *Grant v. Detroit Ass’n of Women’s Clubs*, 505 N.W.2d 254, 258–59 (Mich. 1993). However, an agreement in the form of a lease usually implies a relationship of landlord and tenant even if not expressly so stated. See, e.g., *Misco Indus., Inc. v. Bd. of County Comm’rs*, 685 P.2d 866, 872 (Kan. 1984) (“A tenant is one who has the temporary use and occupancy of the leased property belonging to another. The duration and other terms of the occupancy are usually defined by the lease agreement, while the parties are placed in the relationship of landlord and tenant.”); *Tex. Co. v. Butler*, 256 P.2d 259, 263 (Or. 1953) (“[U]pon the execution of the lease and an entry by the lessee upon the premises the relationship created between the parties is that of landlord and tenant.”).

8 See *Van Pelt v. Russell*, 203 S.W. 267, 268 (Ark. 1918) (“[T]he relation of landlord and tenant is always created by contract, either express or implied, and it will never be implied when the acts and conduct of the parties are inconsistent with its existence.”); *Beck v. Minn. & W. Grain Co.*, 107 N.W. 1032, 1033 (Iowa 1906) (“The relation of landlord and tenant is created by contract, either expressed or implied, by the terms of which one person designated ‘tenant’ enters into possession of the land under another known as ‘landlord.’”); *Hellebush v. Tischbein Apothecaries, Inc.*, 6 N.E.2d 584, 585 (Ohio Ct. App. 1936) (“Taking or continuing in possession, and pay-

landlord-tenant relationship, as opposed to which party has title in the property.<sup>9</sup>

Mere agreement, without certain other factors, is insufficient to create a landlord-tenant relationship. In order for a landlord-tenant relationship to exist, each of the following elements must be present:

- (1) a reversion in the landlord; (2) the creation of an estate in the tenant either at will or for a term less than that which the landlord holds; (3) the transfer of exclusive possession and control of the premises, or a portion thereof, to the tenant; and (4) a contract, either express or implied, between the parties.<sup>10</sup>

Courts are reluctant to find a landlord-tenant relationship where the would-be landlord is merely a rent collector and nothing more.<sup>11</sup>

Whether possession has been transferred to a prospective tenant—the third requirement for the formation of a landlord-tenant relationship—is a crucial element of the test, particularly with respect to shelters.<sup>12</sup> For example, a landlord-tenant relationship is not created in cases of a hotel guest or transient lodgers, as courts consider these individuals to be licensees.<sup>13</sup> Indeed, one of the distinguishing features of the hotel-guest relationship—the fact that exclusive possession has not been transferred—is a particularly relevant distinction to shelters.<sup>14</sup> The middle ground between landlord-tenant and hotel-guest is nonetheless elusive, and courts have tried to factually distinguish cases to categorize them.<sup>15</sup>

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ment of rent, manifest an intention to create a tenancy, no other form of expressing such intent being required by any statute.”).

9 See *Estes v. Gatliff*, 163 S.W.2d 273, 275 (Ky. Ct. App. 1942) (“The relation of land-lord [sic] and tenant does not depend upon the landlord’s title but upon the agreement.”).

10 *Letsinger v. Drury Coll.*, 68 S.W.3d 408, 411 (Mo. 2002); see also *Grant*, 505 N.W.2d at 258 n.6 (noting that all of the elements must be present).

11 *Rittenberg v. Donohoe Constr. Co.*, 426 A.2d 338, 341 (D.C. 1981) (“Simply collecting rents for a landlord does not create a landlord-tenant relationship between the tenant and the rental agent entitling the tenant to a claim against the rental agent for damages for breach of his lease agreement, and for constructive eviction by his landlord.”).

12 RESTATEMENT (SECOND) OF PROP.: LANDLORD AND TENANT § 1.2 (1977 & Supp. 2007).

13 See *Roberts v. Casey*, 93 P.2d 654, 659 (Cal. App. Dep’t Super. Ct. 1939).

14 See *infra* Part II.B.2.

15 See generally Robert H. Kelley, *Any Reports of the Death of the Property Law Paradigm for Leases Have Been Greatly Exaggerated*, 41 WAYNE L. REV. 1563, 1569 (1995) (noting the wide variety of ways courts treat leases).

### B. *More Complex Landlord-Tenant Relationships*

On the outer bounds of landlord-tenant jurisprudence, courts have historically been unwilling to recognize a landlord-tenant relationship in the case of an employment contract that also includes accommodations provided by the employer. In 1895, the Michigan Supreme Court held that a teacher with a contract that included a schoolhouse apartment did not have a landlord-tenant relationship with the school district.<sup>16</sup> The court focused on the terms of the employment agreement, finding there was “no letting in terms, no rent reserved, and where it is clear that the purpose of the occupancy was to enable the employe [sic] to perform the service of his employer.”<sup>17</sup> The teacher was therefore not entitled to a traditional landlord-tenant relationship despite occupying the schoolhouse apartment.<sup>18</sup> The court did find, however, that a tenancy at sufferance could be created upon the termination of the employment agreement because the teacher still lived on the premises.<sup>19</sup> This example underscores the fluidity of the landlord-tenant relationship—it may be created by a tenant staying on the premises after the expiration of the agreement, even though the agreement itself did not create the relationship.

The Michigan Supreme Court changed this direction of landlord-tenant case law through its watershed decision in *Grant v. Detroit Ass'n of Women's Clubs*,<sup>20</sup> which recognized a landlord-tenant relationship for employees living on the premises of an employer.<sup>21</sup> In *Grant*, an employer terminated his employee and subsequently changed the locks on the former employee's apartment.<sup>22</sup> The court's decision expanded the notion of the landlord-tenant relationship, holding that

“[t]here is no inconsistency between the relation of landlord and tenant and that of master and servant, and, where it appears that the occupation of the master's premises is not treated by the parties themselves as a mere incident of the service, and the master has parted with the control of the premises, it may be regarded in law as an occupation as tenant, even though the rental is satisfied in whole or in part by the services rendered.”<sup>23</sup>

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16 Sch. Dist. No. 11 v. Batsche, 64 N.W. 196, 197 (Mich. 1895).

17 *Id.*

18 *Id.*

19 *Id.*

20 505 N.W.2d 254, 258 (Mich. 1993).

21 *Id.* at 258.

22 *Id.* at 256.

23 *Id.* at 258 (quoting 51C C.J.S. *Landlord and Tenant*, § 6(2), at 40 (1968)).

This recognition of a landlord-tenant relationship altered the view that the transfer of an estate to a tenant was the defining element of the landlord-tenant relationship.<sup>24</sup> Part of the rationale for extending the relationship was “the fact that a landlord wears two hats, landlord and employer, [which] does not excuse the landlord from compliance both with housing and employment laws.”<sup>25</sup> This is evidence of the court’s resort to public policy rather than the common law in construing the existence of a landlord-tenant relationship.

### C. *The Typical Characteristics of a Landlord-Tenant Relationship*

An ordinary landlord-tenant relationship involves the tenant contracting with the landlord for a residence, typically for the occupancy of an apartment or house.<sup>26</sup> The primary aim of this relationship is generally related to a living space and nothing more.<sup>27</sup> While the landlord may place burdens on the tenant’s use of the premises, he is not usually trying to change the behavior of the tenant and the tenant is not seeking to be changed.<sup>28</sup> The landlord’s primary concern in the traditional relationship is the monthly consideration he receives from the tenant.

On the other hand, the relationship between a victim and a shelter is different. The victim is usually distressed and needs a place to stay, but more importantly, needs to separate herself from the abusive environment she is fleeing.<sup>29</sup> At the same time, she needs help becoming self-reliant and rebuilding her life so that she may be pro-

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24 See Gerald Korngold, *Whatever Happened to Landlord-Tenant Law?*, 77 NEB. L. REV. 703, 709 (1998) (noting that the distinction between a general contract and the conveyance of an estate is questionable).

25 *Grant*, 505 N.W.2d at 259.

26 See 52 C.J.S. *Landlord and Tenant*, § 5 (2003).

27 See 52 C.J.S. *Landlord and Tenant*, § 2, at 63 (2003) (“The landlord-tenant relationship exists only with respect to a space that is intended to have a fixed location for the duration of the lease.”).

28 See Thomas W. Merrill & Henry E. Smith, *The Property/Contract Interface*, 101 COLUM. L. REV. 773, 822 (2001) (“[P]robably the most important attribute of a lease from the tenant’s perspective is the transfer of in rem rights associated with ownership for the duration of the lease term.”).

29 See Weiner, *supra* note 2, at 187 (“If there were no shelter, I wouldn’t have left home because there is nowhere else for me to go. Both my parents are dead and I have no other family. My friends fear my husband . . . Without the Shelter, I know that I would be dead now. My husband would have beaten me to death or would have shot me.” (quoting *Victims of Crime: Hearings on J.R. 2786, H.R. 3352, and H.R. 3678 Before the Subcomm. on Criminal Justice of the H. Comm. on the Judiciary*, 100th Cong. 52–53 (1987) (statement of Wendy Gourdeau))).

ductive again.<sup>30</sup> These needs require a structured arrangement whereby the victim can learn to live independently.<sup>31</sup> Housing programs thus help women by means of a multi-step process that progressively teaches them how to live independently of their former abusers.<sup>32</sup>

A victim's relationship with a shelter is also unique because shelter occupants sign residency agreements for the services of the program, rather than merely for housing accommodations.<sup>33</sup> Many of the victims are forced out of their homes due to conditions that vary from domestic violence to poverty.<sup>34</sup> These victims need much more than accommodations if they are to become independent from their former abusers. The shelters provide them with specific programs which are narrowly tailored to solve each participant's problems. For example, a single YWCA can have two separate programs in the same facility—one for women who are homeless and one for women fleeing domestic violence.<sup>35</sup> The extent of a program's intervention in its residents' lives and the requirements of participation also vary widely among shelters. Some merely require the participant to look for work that will allow her to find permanent living accommodations, while others involve a multi-step program whereby the individual is gradu-

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30 See Mullins, *supra* note 1, at 249–50 (“[W]omen are able to regain control over their lives with the support of the shelter’s staff and counseling programs.”).

31 See STEPHEN COLEMAN, MINN. CTR. AGAINST VIOLENCE & ABUSE, AN EVALUATION OF MINNESOTA’S SHELTER PROGRAM FOR BATTERED WOMEN, (2001), <http://www.mincava.umn.edu/documents/shelter/shelter.html> (last visited Oct. 30, 2007) (“When a woman enters a shelter, the shelter staff works with her to develop a plan of action for her time in the shelter. The plan addresses the issues that she cites as important to enhance her safety and move her on to a better living situation.”).

32 See Weiner, *supra* note 2, at 189 (“Shelters try to help women see their options and reach decisions. For example, Women’s Advocates, in Minneapolis, does ‘whatever possible to help a battered woman reassert control over her life: accompany her to the hospital or help her find a new apartment, apply for welfare or get a court order for protection. . . . [T]he shelter often provides child care so women can meet with their attorneys or attend classes and support groups.’” (quoting George Howe Colt, *Stop! For God’s Sake Stop!*, LIFE, Oct. 1988, at 120, 125)).

33 See COLEMAN, *supra* note 31 (discussing EDWARD W. GONDOLF & ELLEN R. FISHER, BATTERED WOMEN AS SURVIVORS (1988), and noting that, “[i]n their extensive study of women in battered women’s shelters in Texas, Gondolf and Fisher discussed how shelters have evolved from simply providing refuge to offering many other services.”).

34 See *Serreze v. YWCA of W. Mass., Inc.*, 572 N.E.2d 581, 584 (Mass. App. Ct. 1991).

35 YWCA Supplemental Memorandum in Opposition to Motion for Preliminary Injunction at 2, *Coyne v. YWCA Greater Toledo*, No. CVG-06-15975 (Ohio Mun. Ct., Sept. 6, 2006) (noting the parallel nature of the battered woman’s shelter and the homeless shelter programs).



ally granted greater freedoms.<sup>36</sup> Each program therefore differs in the level of involvement by the shelter.

#### D. *Statutory Prohibitions on Landlord Self-Help Remedies*

An essential aspect of landlord-tenant law, particularly in the context of shelters, is the eviction process. Self-help eviction was a common law practice whereby a landlord can enter the premises and evict a tenant unlawfully holding over.<sup>37</sup> Most states have rejected self-help remedies in landlord-tenant statutes, instead forcing a landlord to go to a court and seek an eviction order.<sup>38</sup> This change was primarily aimed at preserving the peace.<sup>39</sup>

Anti-self-help eviction statutes only apply when a landlord-tenant relationship actually exists.<sup>40</sup> Some state statutes, however, are more

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36 See, e.g., *Serreze*, 572 N.E.2d at 582–83 (“The TLP program, a blend of housing and social services, is unique in that it is designed . . . [to provide] comprehensive ‘second stage’ support for selected families seeking transition to a life independent of their former abusers.”); *Ann Arbor Tenants Union v. Ann Arbor YMCA*, 581 N.W.2d 794, 798 (Mich. Ct. App. 1998) (“[T]he YMCA will assist its residents in finding permanent housing.”).

37 See *Lindsey v. Normet*, 405 U.S. 56, 71 (1972) (“[T]he common law also permitted the landlord to ‘enter and expel the tenant by force, without being liable to an action of tort for damages, either for his entry upon the premises, or for an assault in expelling the tenant, provided he uses no more force than is necessary . . . .’” (quoting *Smith v. Reeder*, 28 P. 890, 891 (Or. 1892))); 2 MILTON R. FRIEDMAN, *FRIEDMAN ON LEASES* § 18:6 (Patrick A. Randolph, Jr. ed., 5th ed. 2006).

38 See RESTATEMENT (SECOND) OF PROP.: LANDLORD AND TENANT § 14.3 (1977 & Supp. 2007).

39 *Id.* § 14.3 cmt. a.

40 “The statute[s] are] applicable only to a case where the relationship of landlord and tenant actually exists. The courts of other jurisdictions, in construing similar statutes, have generally, if not universally, held that, in order to maintain such summary proceedings, it is essential that the conventional relation of landlord and tenant exist.” *Stewart-Jones Co. v. Shehan*, 121 S.E. 374, 376 (S.C. 1924); see also MICH. COMP. LAWS § 600.2918(2) (1979) (“Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner, lessor, licensor, or their agents shall be entitled to recover the amount of his actual damages . . . .”); OHIO REV. CODE ANN. § 5321.15(A) (LexisNexis 2004) (“No landlord of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises, or threat of any unlawful act, against a tenant . . . .”); *Ann Arbor*, 581 N.W.2d. at 798 (“The distinction between a guest and a tenant is significant whereby a guest is not entitled to notice of termination and can be the subject of self-help eviction, including a lockout, by the proprietor, while a tenant has protection against such measures.”); John V. Orth, *Who is a Tenant? The Correct Definition of the Status in North Carolina*, 21 N.C. CENT. L.J. 79, 81 (1995) (“Now that so much depends on whether the party fits within a certain category, it has become crucial to know who qualifies for membership.”).

broadly applicable than others.<sup>41</sup> For example, the Massachusetts Code provides that “any lessor or landlord of any building or part thereof occupied for dwelling purposes” may not resort to self-help in evicting a tenant.<sup>42</sup> Courts interpreting this statute have broadly construed the terms “lessor” and “landlord,” opining that the terms evince a legislative intent to expand the statute’s applicability beyond just a landlord-tenant relationship.<sup>43</sup>

The applicability of these statutes to shelters is particularly important. If shelters are subject to landlord-tenant statutes, their managers may have trouble evicting problem residents.<sup>44</sup> Thus, the characterization of shelter occupants as either guests or tenants is of paramount importance in determining the legal ramifications of their relationship with the shelter.

## II. THE LEGAL STATUS OF THE RELATIONSHIP BETWEEN RESIDENTS AND THEIR SHELTERS

Having considered the general framework of landlord-tenant common law, this Note next turns to the legal status of shelter residents. Although landlord-tenant law is relatively well-defined by state statutory law, it is not easily applicable to the context of shelters. Most state statutes do not even attempt to address the rules governing shelters. Courts have therefore varied in their approaches to landlord-tenant statutes in the context of shelters.

### A. *Relevant Statutory Law*

Many of the common law rules determining the nature of landlord-tenant relationships have been abrogated by state statutes, which vary as to their application and scope. For the most part, state landlord-tenant statutes can be divided into three main categories: those

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41 See, e.g., N.J. STAT. ANN. § 2A:18-61.1 (West 2000 & Supp. 2007) (“No lessee or tenant . . . may be removed . . . from any house . . . leased for residential purposes, other than (1) . . . a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant . . . except upon establishment of . . . good cause.”). The Colorado forcible entry and detainer statute defines forcible entry, which prevents any entry upon the premises unlawfully, and then defines situations in which it would be unlawful for a landlord to enter upon the premises for purposes of excluding a tenant. See COLO. REV. STAT. §§ 13-40-101 to 13-40-104 (2007).

42 See MASS. GEN. LAWS ch. 186, § 14 (2007).

43 See *Serreze v. YWCA of W. Mass., Inc.*, 572 N.E.2d 581, 584 (Mass. App. Ct. 1991); see also MASS. GEN. LAWS ch. 186, § 14 (2007) (using the terms landlord or lessor).

44 See *infra* Part III.B.

that directly exclude certain arrangements from their scope,<sup>45</sup> those that define tenants and residential premises broadly and vaguely,<sup>46</sup> and those that define their applications broadly but rely on common law definitions to limit their scope.<sup>47</sup> Some states define the terms “landlord,” “tenant,” and “residential premises” to determine what is covered by their landlord-tenant acts.<sup>48</sup> Others use broader language, such as “landlord or lessor,” in defining the extent to which common law principles are abrogated.<sup>49</sup>

Certain states have also adopted various versions of the Uniform Residential Landlord and Tenant Act without explicitly clarifying whether shelters qualify as landlords.<sup>50</sup> The Uniform Act exempts

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45 For an example of a broadly defined exclusion, see ARIZ. REV. STAT. ANN. § 33-1308 (2007) (“Unless created to avoid the application of this chapter, the following arrangements are not covered by this chapter: 1. Residence at an institution, public or private, if incidental to detention, the provision of medical, educational, counseling or religious services or the provision of a social service program that is provided by a social service provider. For the purposes of this paragraph, ‘social service provider’ means a private entity that directly assists an individual or family in obtaining housing and that offers to provide the individual or family with assistance in obtaining employment, child care, health care, education, skills training, transportation, counseling or any other related service.”); *see also* N.Y. REAL PROP. ACTS. LAW § 713 (McKinney 2007) (defining the relationships outside the scope of the landlord-tenant act); OHIO REV. CODE ANN. § 5321.01(C) (LexisNexis 2004) (excluding certain arrangements from the statutory definition of “residential premises,” which defines the scope of the Ohio Landlord-Tenant Act).

46 *See, e.g.*, KAN. STAT. ANN. § 58-2543(o) (2005) (“‘Tenant’ means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.”); N.C. GEN. STAT. § 42-40(2) (2005) (“‘Premises’ means a dwelling unit, including mobile homes or mobile home spaces, and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities normally held out for the use of residential tenants.”).

47 *See, e.g.*, TEX. PROP. CODE ANN. § 92.002 (Vernon 2007) (“This chapter applies only to the relationship between landlords and tenants of residential rental property.”); *see also* COLO. REV. STAT. § 13-40-104 (2007) (enumerating instances in which forcible entry is unlawful); N.J. STAT. ANN. § 2A:18-59.2 (West 2006) (“This act shall not apply to a hotel, motel or other guest house, or part thereof, rented to a transient guest or seasonal tenant, or a residential health care facility . . . .”); N.Y. REAL PROP. ACTS. LAW § 711 (McKinney 2007) (“A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer . . . .”); N.C. GEN. STAT. § 42-39(a) (2005) (“The provisions of this Article shall not apply to transient occupancy in a hotel, motel, or similar lodging subject to regulation by the Commission for Health Services.”).

48 *See, e.g.*, OHIO REV. CODE ANN. § 5321.01 (LexisNexis 2004).

49 One such state is Massachusetts. *See* MASS. GEN. LAWS ch. 186, § 14 (2007).

50 For an example of an exclusion that only applies if unintentionally used, *see* IOWA CODE ANN. § 562A.5 (West 2002 & Supp. 2007) (“Unless created to avoid the

from its coverage “residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.”<sup>51</sup> A fair interpretation can either accept or reject the landlord-tenant relationship in the case of shelters.<sup>52</sup> Courts must therefore tackle the statutes based on the common law and legislative intent.

The Uniform Act raises special questions of applicability: it exempts certain arrangements from landlord-tenant requirements “[u]nless created to avoid the application of [the] Act.”<sup>53</sup> The Oregon Supreme Court interpreted this section in *Burke v. Oxford House of Oregon Chapter V*<sup>54</sup> and found that while the defendant’s program

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application of this chapter, the following arrangements are not governed by this chapter: 1. Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service . . . .”); *see also* CONN. GEN. STAT. § 47a-2 (2007) (“Unless created to avoid the application of this chapter . . . , the following arrangements are not governed by this chapter . . . : (1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling or religious service, or any similar service . . . .”); KAN. STAT. ANN. § 58-2541 (2005) (“Unless created to avoid the application of this act, the following arrangements are not governed by this act: (a) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service . . . .”); NEB. REV. STAT. § 76-1408 (2003) (“Unless created to avoid the application of the Uniform Residential Landlord and Tenant Act, the following arrangements are not governed by the act: (1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.”); OKLA. STAT. tit. 41, § 102 (2001) (“Unless the context otherwise requires . . . .”); VA. CODE ANN. § 55-248.5(A) (2003) (“Except as specifically made applicable . . . , the following conditions are not governed by this chapter: 1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services . . . .”). For an example of a state statute that excludes arrangements similar to shelters without regard to the awareness of the parties, see FLA. STAT. § 83.42 (2007) (“This part does not apply to: (1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.”); *see also* KY. REV. STAT. ANN. § 383.535 (West 2006) (“The following arrangements are not governed by KRS 383.505 to 383.715: (1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational counseling, religious, or similar service.”).

51 UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.202, 7B U.L.A. 297–98 (2006).

52 *See, e.g.,* YMCA of Stamford v. Bentley, 37 Conn. L. Rptr. 397, 400–01 (Conn. Super. Ct. 2004) (finding the Stamford YMCA exempt from the Residential Landlord-Tenant Act on the ground that the YMCA is a social or fraternal organization within the meaning of the exemption statute.).

53 UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.202, 7B U.L.A. 297–98 (2006).

54 137 P.3d 1278 (Or. 2006).

arrangements would otherwise have been exempt under the Act, defendant was aware of the Act and instructed its contracting officer how to sign the residency agreements so as to avoid triggering the landlord-tenant provisions.<sup>55</sup> As a result, the shelter was subject to the landlord-tenant rules and its eviction of plaintiff was improper.<sup>56</sup>

The arrangements in Oxford House—which would have been protected from the landlord-tenant relationship if the *Burke* court had not found avoidance of the Act—differed from those in traditional shelters;<sup>57</sup> but these differences should not be legally sufficient to deprive any shelter of protection from the landlord-tenant framework. Oxford House is a program for recovering alcoholics that allows a group to live together in a house with communal facilities.<sup>58</sup> Each house operates independently and members democratically solve problems, with the proviso that anyone who relapses shall be evicted immediately.<sup>59</sup> The effectiveness of the homes is largely due to the strict nature of the house rules and the severity of the punishment for relapse.<sup>60</sup> Thus, the basic difference between Oxford House and traditional shelters—the characteristic that exempted it from landlord-tenant law—is the extent to which the participants in the shelter program live autonomously. Following *Burke*, Oregon shelters wanting to ensure their eviction rights may have chosen to follow the Oxford House model. In other words, they would have to become

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55 *Id.* at 1282.

56 *Id.*

57 According to those who have been in shelter programs, however, the arrangements in Oxford House were ideal in helping women through domestic violence, “[T]he women themselves find the shelter environment more important than its services. In a follow-up survey of sixty-two women who had stayed at the YWCA Women’s Emergency Shelter in Santa Rosa, California, over half said that the best thing that happened for them at the shelter was the sensitive sustaining support from staff and residents.” Weiner, *supra* note 2, at 272–73 (citing Nancy Peterson, *Beyond Battery: A Follow-up Study of Residents of a Woman’s Shelter 16* (Sept. 1980)).

58 *Burke*, 137 P.3d at 1279.

59 *Id.* For an analysis of a shelter in Germany that was effective in facilitating self-help, see Weiner, *supra* note 2, at 275 (“Self-help is the philosophy of the women’s houses. ‘Women who work in the houses give newcomers the necessary information concerning the operation of the house and advise the women on legal and medical questions. The battered women themselves organize everything else. They answer the phones, take care of newcomers at night and on weekends, and accompany each other to social service agencies. The most important aspect of self-help, however, is that the women talk with each other and learn that their experiences are not unique.’” (quoting *The Shelter Movement in West Germany*, RESPONSE TO THE VICTIMIZATION OF WOMEN AND CHILDREN, Spring 1985, at 27)).

60 See *Burke v. Oxford House of Or. Chapter V*, 103 P.3d 1184, 1185–86 (Or. Ct. App. 2004) (en banc), *rev’d*, 137 P.3d 1278 (Or. 2006).

more intrusive into the lives of the participants to guarantee that they do not inadvertently create a landlord-tenant relationship. Such judicial tampering with the structures of shelters is undoubtedly problematic. Most importantly, shelters would be deprived of the flexibility to experiment with programs that yield the most effective results.

Thus, the Oregon Supreme Court's interpretation of the Uniform Residential Landlord and Tenant Act indicates that despite the apparent limits on the Act's reach, courts are willing to interpret it broadly—even if it is to the detriment of shelters. Complicating the law surrounding shelters further, the Act and its adaptations are subject to extensive and widely varying judicial interpretations.

### B. *Judicial Interpretation of Statutory Law*

The structure of state statutes defining the scope of the landlord-tenant relationship is the primary basis on which courts have decided whether residents have a landlord-tenant relationship with their shelters. To date, courts have mostly focused on statutory definitions and, to a lesser extent, on statutory exclusions.<sup>61</sup>

Nevertheless, courts are often driven by an urge to find a remedy when a sympathetic participant has been evicted from a shelter. The most significant drawback to this approach is its potential to adversely affect future participants in the program by hindering shelters' ability to evict problematic residents who threaten others. Thus, courts must be wary of broadly construing the relevant statutes as providing shelter residents with extensive tenant rights.

Despite the negative consequences of endowing shelter residents' with unrestricted tenant rights, courts are split as to whether shelters have landlord-tenant relationships with their residents. A few of them have found that such a relationship exists; and that therefore the shelters may not evict residents without a court order. Others have pursued the opposite line of reasoning, finding no landlord-relationship between shelters and their residents.

#### 1. Finding a Landlord-Tenant Relationship in the Context of Shelters

In *Higdon v. Sign of the Cross Housing, Inc.*,<sup>62</sup> an Ohio court found that a landlord-tenant relationship existed between a nonprofit faith-

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61 See, e.g., *Baker v. Rushing*, 409 S.E.2d 108, 112–13 (N.C. Ct. App. 1991) (analyzing both the definition of landlord and the exclusions sections of the North Carolina Landlord-Tenant Act).

62 803 N.E.2d 876 (Ohio Mun. Ct. 2003).

based housing project and its occupants.<sup>63</sup> The conditions of the faith-based program were as follows: participants could remain in program housing for a maximum of 180 days; they had to pay a fee at the beginning of the month but no security deposit; and they had to participate in the faith-based program.<sup>64</sup> The plaintiff had moved into a unit affiliated with the group and brought her own furniture.<sup>65</sup> When she failed to pay her monthly fee, the locks on the door were changed.<sup>66</sup> In deciding whether a landlord-tenant relationship existed, the court looked primarily to a section of the Ohio Landlord-Tenant Act excluding emergency shelters for transient occupants from the definition of residential premises.<sup>67</sup> The court decided that the service provided by Sign of the Cross was neither on an emergency basis nor transitory in nature.<sup>68</sup> Thus, the court held the Act to apply, creating a landlord-tenant relationship.<sup>69</sup> Accordingly, defendant Sign of the Cross was required to follow the statutory procedures for evicting the plaintiff, who was entitled to relief for its failure to do so.<sup>70</sup>

The decision in *Higdon* seems isolated in the sense that it focused solely on the “emergency shelter” exception in the Ohio Landlord-Tenant Act.<sup>71</sup> The court also neglected an alternate provision in the statute, which provided an exemption for (1) tax-exempt organizations that operated “single room occupancy facilities”<sup>72</sup> in charitable programs and (2) shelters “for victims of domestic violence, or homeless persons.”<sup>73</sup> The court’s lack of analysis of this alternate exception in the Ohio Landlord-Tenant Act could have resulted either from an oversight by the judges or from their desire to constrain programs that wished to operate shelters. If the former, *Higdon* is indeed unique; if the latter, the Ohio Landlord-Tenant Act severely limits the ability of shelters to structure their programs to achieve maximum effectiveness. The court’s ruling therefore seems to imply that the exemption as written only applies to shelters that operate dormitory style programs. Nonetheless, *Higdon* raises the question of the extent

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63 *Id.* at 880–81.

64 *Id.* at 877.

65 *Id.*

66 *Id.* at 878.

67 *Id.* at 878–79.

68 *Id.* at 879.

69 *Id.* at 879.

70 *Id.* at 880–81.

71 *See* OHIO REV. CODE ANN. § 5321.01(C)(10) (LexisNexis 2004).

72 *See id.* § 3731.01 (LexisNexis Supp. 2007) (defining single room occupancy facilities).

73 *Id.* § 5321.01(C)(9)(b)(ii) (LexisNexis 2004).

to which organizations providing shelter are exempt from the Landlord-Tenant Act.

In a decision utilizing a more universal and less technical approach, a Massachusetts court found a landlord-tenant relationship to exist in a traditional shelter situation. In *Serreze v. YWCA of Western Massachusetts, Inc.*,<sup>74</sup> the court was faced with the question of whether abused women were protected from self-help eviction by the YWCA.<sup>75</sup> The YWCA operated a transitional living program where victims of abuse could reside while working to become self-sufficient.<sup>76</sup> In addition to receiving housing, the program's participants were required to either work or attend school, and to frequent counseling and vocational guidance sessions.<sup>77</sup> The program's goal was to facilitate an independent lifestyle for former victims of abuse.<sup>78</sup> Since the program was subsidized by the state, the Code of Massachusetts Regulations applied to the rent charged for the program, capping the fee at twenty-five percent of the participant's income.<sup>79</sup> In the case, a dispute erupted between some program participants and the YWCA and the participants stopped attending the counseling sessions.<sup>80</sup> The YWCA responded by changing the locks on the apartments, preventing participants from returning to their rooms.<sup>81</sup> The participants brought suit against the YWCA, asserting that they had a landlord-tenant relationship with the YWCA and their eviction constituted a violation of the Massachusetts anti-self-help eviction statute.<sup>82</sup> Although the court recognized that "the regulatory scheme underlying the transitional housing program suggests an intention to 'depart from traditional concepts of the landlord-tenant relationship,'" it found that the statute prohibiting self-help evictions applied to, and was violated by, the YWCA.<sup>83</sup> Specifically, the court held that the relationship between the residents and the shelter was akin to a landlord-tenant relationship, requiring an eviction procedure to remove the women.<sup>84</sup>

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74 572 N.E.2d 581 (Mass. App. Ct. 1991).

75 *Id.* at 582.

76 *Id.* at 582-83.

77 *Id.* at 583.

78 *Id.* at 582-83.

79 *Id.* at 583 n.6 (citing 760 MASS. CODE REGS. § 7.02 (1986)).

80 *Id.* at 583.

81 *Id.*

82 *Id.* at 582.

83 *Id.* at 583 (quoting *Spence v. O'Brien*, 446 N.E.2d 1070, 1075 (Mass. App. Ct. 1983)).

84 *Id.* at 584.



While *Higdon* and *Serreze* expanded the rights of resident women, they prevented shelters from quickly evicting threatening residents.<sup>85</sup> However, the extent to which shelters are bound by anti-self-help eviction statutes remained unclear: the courts did not state under what circumstances shelters would be exempt from the statutes.<sup>86</sup> Furthermore, as these court decisions were based on public policy, they may not be applicable to different sets of facts. For example, what if a participant becomes violent or destructive?<sup>87</sup> Perhaps to address this issue, the *Serreze* court implicitly reserved the right to exempt a shelter from the statute, noting that “[t]he plaintiffs have manifested no behavioral disorders justifying substantive limitations on their living accommodations, nor has there been any allegation that the plaintiffs substantially interfered with the rights of other occupants.”<sup>88</sup> Nonetheless, *Serreze* doubtlessly provided strong precedent for finding a landlord-tenant relationship between a shelter and its residents.

## 2. Exempting Shelters from the Landlord-Tenant Relationship

In an opposing line of cases, certain courts have found shelters exempt from state landlord-tenant acts. One of the primary means for analyzing the relationship in these cases has been the extent to which program participants have a possessory interest in their rooms. In *Thomas v. Cohen*,<sup>89</sup> three women from a shelter program sued after being evicted. The shelter in question operated as the last step in a program to get homeless women off the street.<sup>90</sup> As a requirement of staying in the shelter, women had to be employed and pay a monthly fee of \$140.<sup>91</sup> Additionally, the women had to complete chores around the house.<sup>92</sup> Each resident had an individual room and could use communal living areas.<sup>93</sup>

In deciding *Thomas*, the court first looked to the exclusions from the act.<sup>94</sup> Specifically, the Kentucky Uniform Residential Landlord

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85 Meanwhile, the *Serreze* court dismissed claims that its decision would hurt shelters. *See id.* at 584.

86 *See Baker v. Rushing*, 409 S.E.2d 108, 112 (N.C. Ct. App. 1991) (emphasizing that the distinguishing factor for determining who is a tenant is whether the property serves as a prospective tenant’s primary residence).

87 *See infra* Part III.

88 *Serreze*, 572 N.E.2d at 584 n.11.

89 453 F.3d 657 (6th Cir. 2006).

90 *Id.* at 659.

91 *Id.*

92 *Id.*

93 *Id.*

94 *Id.* at 660.

and Tenant Act (KURLTA) exempted “[r]esidence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational counseling, religious, or similar service.”<sup>95</sup> The court therefore concluded that the women lacked any property interest in the shelter and fell outside the scope of the Kentucky Act.<sup>96</sup> Accordingly, the plaintiffs did not have rights under the Act as the exclusion applied to the facility in which they lived.<sup>97</sup>

Next, the court interpreted the definition of “tenant” in the statute to determine its applicability to shelter residents. The Kentucky Act “defines a tenant as ‘a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.’”<sup>98</sup> In construing the Act, the court questioned whether the shelter occupants were “‘entitled under a rental agreement’ to occupy [the shelter] or their individual bedrooms ‘to the exclusion of others.’”<sup>99</sup> The court determined that “plaintiffs failed to qualify as tenants under the KURLTA because they have presented no evidence that they had a right to exclusive possession of [the shelter] or their individual bedrooms.”<sup>100</sup> This outcome—finding against a landlord-tenant relationship in the context of shelters—is typical when courts focus their analysis on whether a shelter occupant was in exclusive possession of the premises.<sup>101</sup>

In *Coyne v. YWCA Greater Toledo*,<sup>102</sup> an Ohio court also examined the possessory interest of a participant in a different YWCA program. The court distinguished the rights of the YWCA to enter the premises from the rights of an ordinary landlord.<sup>103</sup> In the case of the YWCA, the right to enter the premises at any time for such things as inspections prevented the program participants from ever having exclusive possession of their rooms.<sup>104</sup> On the contrary, in the case of an ordinary landlord-tenant relationship, the landlord could enter upon the premises only for specific purposes.<sup>105</sup> Thus, because the residency

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95 KY. REV. STAT. ANN. § 383.535(1) (West 2006).

96 *Thomas*, 453 F.3d at 660–62.

97 *Id.* at 660 (quoting § 383.535(1)).

98 *Id.* at 662 (quoting § 383.545(15)).

99 *Id.* at 662–63 (quoting § 383.545(15)).

100 *Id.* at 662.

101 *See, e.g.*, *Ann Arbor Tenants Union v. Ann Arbor YMCA*, 581 N.W.2d 794 (Mich. Ct. App. 1998) (holding that shelter resident did not have exclusive possession of the premises).

102 No. CVG-06-15975 (Ohio Mun. Ct. Nov. 7, 2006).

103 *Coyne*, slip op. at 5 (citing *Coleman v. Faith Mission*, No. 01CVH-10988 (Ohio Ct. Com. Pl. Jan. 17, 2002)).

104 *See id.*

105 *See id.*

agreement reserved the right of the YWCA to enter the room of the plaintiff at any time, there was no transfer of possession that would facilitate the creation of a landlord-tenant relationship.<sup>106</sup>

Michigan courts have also looked to whether the residents of a shelter have an exclusive possessory interest in the property based on their residency agreements. In *Ann Arbor Tenants Union v. Ann Arbor YMCA*,<sup>107</sup> the court analyzed a residency agreement and found that it did “not contain language evidencing an intent to form a landlord-tenant relationship.”<sup>108</sup> The court found that since the “YMCA specifically reserve[d] the right to ask a guest to leave a room at any time,” the agreement did not create a possessory interest in the property and therefore no landlord-tenant relationship existed.<sup>109</sup> The court noted that instead of being provided a specific room, “the guest explicitly acknowledges that ‘he or she is not a tenant but a licensee on a day-to-day basis, and that [the] Guest has no property or possessory interest in the room being rented to [the] Guest.’”<sup>110</sup> Finally, the court opined that “the residents of the YMCA simply do not have the requisite exclusive possession and control of their premises during the period of their occupancy to give rise to a tenancy.”<sup>111</sup>

In reaching its decision, the *Ann Arbor* court primarily focused on the common law notion that the residency agreement is the crucial factor in determining whether a landlord-tenant relationship exists, noting that the “legal relationship established by the renting of a room generally depends on the intention of the parties, gathered from the terms of the parties’ contract and interpreted in light of surrounding facts and circumstances.”<sup>112</sup> Interestingly, the court did not focus on statutory construction in construing the agreement, which suggests that a purely common law approach would lead courts to conclude that shelter residents are not entitled to protection under state landlord-tenant legislation.

Courts have also been willing to distinguish the relationship between shelters and their occupants from traditional landlord-tenant relationships on the ground that the relationship can be considered

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106 *See id.*

107 581 N.W.2d 794 (Mich. Ct. App. 1998).

108 *Id.* at 799. For an example of a New Jersey court finding no landlord-tenant relationship in the case of the YMCA where rooms were rented on a week-to-week basis, see *Poroznoff v. Alberti*, 391 A.2d 984, 986–87 (N.J. Dist. Ct. 1978), *aff’d*, 401 A.2d 1124 (N.J. Super. Ct. App. Div. 1979).

109 *Ann Arbor*, 581 N.W.2d at 799.

110 *Id.* at 800.

111 *Id.*

112 *Id.* at 798.

that of hotel-guest rather than landlord-tenant.<sup>113</sup> In *Ann Arbor*, for example, the court found that the relationship was one of hotel-guest and not landlord-tenant.<sup>114</sup> In support, it noted that the YMCA's accommodations consisted of "communal bathroom facilities at one end of the hall containing several showers, sinks, urinals, and toilets to be used by the occupants of the floor. Each room is occupied by one person and is furnished by the YMCA with a single bed, a closet, a desk, and a chair."<sup>115</sup> Furthermore, the room keys were at the YMCA front desk while residents were away and the YMCA "reserve[d] the right to enter the rooms for purposes of security, inspection, and maintenance."<sup>116</sup> The YMCA also required that the residents sign an agreement that used the terms "hotel" and "guest."<sup>117</sup> In the residency agreement, the YMCA retained "the right to terminate a guest's occupancy and ask the guest to leave at any time and without any reason and that if the guest does not do so voluntarily within twenty-four hours upon request, the YMCA may lock the guest out of the room without further notice."<sup>118</sup>

Another factor the *Ann Arbor* court found to support the hotel-guest relationship was an agreement the YMCA had concluded with the City of Ann Arbor, providing that the "YMCA would 'continue to use its best efforts to refer residents to appropriate social agencies, including, but not limited to, mental health services, job skill and job placement services and *assistance in finding permanent affordable housing*.'"<sup>119</sup> The court inferred that "finding permanent housing" meant that the YMCA could not be the plaintiffs' permanent residence, as in a traditional landlord-tenant relationship.<sup>120</sup> Since the court found

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113 See, e.g., *Poroznoff*, 391 A.2d at 986-87 (holding the relationship between a YMCA and its guests to be one of hotel-guest rather than landlord-tenant). See generally Amy M. Campbell, Note, *When a Hotel Is Your Home, Is There Protection?—Baker v. Rushing*, 15 CAMPBELL L. REV. 295, 296 (1993) (discussing North Carolina landlord-tenant law with respect to hotel-guest distinctions).

114 Another motivation for finding this relationship is that some states do not include a blanket exemption for shelters from a landlord-tenant act without a finding that the residents are licensees. See N.Y. REAL PROP. ACTS. LAW § 713 (McKinney 2006).

115 *Ann Arbor*, 581 N.W.2d at 796.

116 *Id.* at 796.

117 *Id.* at 796-97.

118 *Id.* at 797.

119 *Id.* For another example of a court focusing on the goal of finding other housing, see *Helping Out People Everywhere v. Deich*, 589 N.Y.S.2d 744, 747 (City Ct. 1992), *aff'd*, 615 N.Y.S.2d 215 (App. Term 1994) (finding that the plaintiff was not a permanent resident, as his affidavit stated he was to reside in the shelter "until permanent housing accommodations [were] available").

120 *Ann Arbor*, 581 N.W.2d at 798-99.

that no landlord-tenant relationship existed, the state statutes preventing self-help evictions were inapplicable.<sup>121</sup> Thus, shelters in Michigan may now ensure avoidance of landlord-tenant law by structuring their agreements around the goal of getting victims out of the shelter.

The court in *Ann Arbor* further distinguished landlord-tenant relationships from hotel-guest relationships, noting that a “tenant has exclusive legal possession and control of the premises against the owner for the term of his leasehold, whereas a guest is a mere licensee and only has a right to use of the premises he occupies, subject to the proprietor’s retention of control and right of access.”<sup>122</sup> The court’s analysis of the hotel-guest law therefore indicates that if a shelter structures its residency agreement such that the relationship is clearly one of hotel-guest, it may succeed in removing the relationship from the scope of the landlord-tenant law.

Thus, while some courts interpret their state statutes to declare that shelters are landlords and shelter residents are tenants, others do not. The implications of these categorizations are immense for shelters: If landlord-tenant law protects individual residents, shelters are unable to quickly evict problematic residents who threaten the success and safety of the shelters. Although the states are split as to the legal status of shelter residents, public policy considerations overwhelmingly warn against protecting problematic residents at the expense of the success of shelters.

### III. PUBLIC POLICY ARGUMENTS ON LANDLORD-TENANT RELATIONSHIPS IN THE CONTEXT OF SHELTERS

Public policy is a primary driving force in deciding whether to recognize a landlord-tenant relationship between shelters and their residents. On the one hand, applying landlord-tenant statutes to shelters prohibits shelter operators from quickly and decisively evicting problematic residents. On the other hand, shelter residents must be protected from arbitrary and unfair eviction, particularly when they have nowhere else to live.

#### A. *Protecting Troubled Individuals at the Expense of the Shelter*

*Serreze* perfectly illustrates the significant role public policy plays in judicial determinations of the legal status of shelter residents.<sup>123</sup>

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121 *Id.* at 802.

122 *Id.* at 800.

123 As part of the rationale in *Serreze*, the court found that the “participants are capable of independent living, and have been furnished with the means to secure themselves and their children.” *Serreze v. YWCA of W. Mass., Inc.*, 572 N.E.2d 581,

However, that court's perception of the problem may be misguided. It reasoned that "[t]o deny such program participants some form of predeprivation process may only perpetuate the cycle of temporary shelter and dislocation."<sup>124</sup> At best, this concern is hypothetical: the court had no empirical evidence to support its assertion, and the program evicted the women as a result of their failure to follow the prescribed program.<sup>125</sup>

The main problem with the reasoning in *Serreze* is that the court perceived a wrong committed by the YWCA against the women, and tried to effectuate a remedy without either a statutory basis or a common law foundation. The court acknowledged that it sought to protect the program participants, noting that "in construing the term 'tenant', courts have looked beyond rigid common law definitions to effectuate an appropriate remedy."<sup>126</sup> The court's remedy, however, reinterpreted the language of the anti-self-help statute to include arrangements that the court acknowledged were not covered by the traditional relationship. This judicial expansion of the definition of a tenant probably causes more problems for shelters than it seeks to solve.

On the other hand, public policy would seem to dictate that courts try to enforce the antilockout statutes as much as possible. The purpose of many such statutes is to "reduce the number of violent confrontations occurring as a consequence of landlords entering onto the premises while tenants believed that they were rightfully in posses-

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584 (Mass. App. Ct. 1991). The independence of these individual plaintiffs implies that finding a landlord-tenant relationship in these circumstances would not expand the scope of the statute very far from its original application to the standard relationship. However, this is implausible insofar as the women remain monitored by the shelter and are still required to attend counseling sessions. The nature of the programs is such that participation is the only way for the women to transition back to a normal living arrangement. The court also found that "[u]nder the agreements, [the victims] reside in an apartment and pay for the exclusive right of possession and control." *Id.* at 584. While assertive, this statement does not provide any analysis of the living arrangements. The court went on to mention the difference between the shelter program in the instant case and those for mental health patients, leaving the question unanswered as to what circumstances would not create a landlord-tenant relationship. *Id.* at 582-83. The court does not mention why such a distinction is relevant to the landlord-tenant relationship, as the mental health of the resident is not a reason to distinguish the relationship.

124 *Id.* at 584.

125 See Merrill & Smith, *supra* note 28, at 821 ("[P]lausible arguments were made that loading up on tenants' rights was not in the best interests of low-income tenants as a class. This was because the new rights had the potential to cause higher rents and a reduced supply of housing.").

126 *Serreze*, 572 N.E.2d at 584 n.9.

sion.”<sup>127</sup> Exempting institutions from these statutes has the effect of supporting that which the statutes sought to eliminate. Thus, although courts strive to protect women from their abusers, their efforts may be counterproductive if they undermine the shelters’ ability to evict problematic residents.

### B. *Landlord-Tenant Law’s Negative Consequences for Shelters*

By granting residents rights under state landlord-tenant law, courts often hurt a shelter’s chances of success.<sup>128</sup> The negative consequences range from financially ruining shelters to compromising their ability to construct the most effective programs.<sup>129</sup> Furthermore, shelters would have a difficult time evicting violent residents who threaten other participants and create unhealthy environments. Finally, allowing someone to stay even when she refuses to adhere to the program’s rules hinders shelters from maintaining discipline and high expectations.

#### 1. Financial Impact of Court Costs

A significant financial pressure on shelters results from the legal costs associated with consistently having to institute eviction proceedings.<sup>130</sup> The Massachusetts Appeals Court in *Serreze* acknowledged that a program may be financially hurt by having to go to court in eviction proceedings, but reasoned that “it is not a characteristic feature of summary process law that the landlord who seeks possession is without speedy remedy.”<sup>131</sup> Even so, an eviction process takes time and resources that could be better spent helping additional victims.<sup>132</sup> Furthermore, Massachusetts does not require a landlord to present cause to evict a tenant, mandating only that the landlord use the legal

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127 *Grant v. Detroit Ass’n of Women’s Clubs*, 505 N.W.2d 254, 259 (Mich. 1993).

128 See generally Sharon A. Chanley et al., *Providing Refuge: The Value of Domestic Violence Shelter Services*, 31 AM. REV. PUB. ADMIN. 393 (2001) (outlining a cost-benefit analysis to women in shelters and quantifying judicial and legal expenses).

129 See Mullins, *supra* note 1, at 248–49 (“Shelters are important for battered women for several reasons. First, they provide women with immediate safety for themselves and their children. Second, they often represent the only real means of escape for battered women. Third, women are able to regain control over their lives with the support of the shelter’s staff and counseling programs.” (footnotes omitted)).

130 *Serreze*, 572 N.E.2d at 584.

131 *Id.*

132 For a discussion of the demands placed on battered women’s shelters for services, see Mullins, *supra* note 1, at 244–45.

process.<sup>133</sup> The argument that evictions are not costly therefore does not respond to the criticism—valuable resources are still being expended in eviction proceedings.<sup>134</sup>

The Michigan Appeals Court in *Ann Arbor* recognized the problem of court costs for shelters and thus based its reasoning partially on the public policy of supporting shelters. It found that a landlord-tenant relationship “would create an intolerable burden on the YMCA in its efforts to provide inexpensive temporary lodging for the very people it undertakes to serve, with a likely result being that those people would, in the end, be without accommodations.”<sup>135</sup> This recognition acknowledges the harm that landlord-tenant law inflicts on shelters—institutions that have the mission of providing services to as many women as possible. Many of these institutions have extremely limited financial resources and are unable to offer their services to a large number of victims when they encounter a litigious resident.<sup>136</sup> Increasing the costs borne by a shelter therefore has the direct impact of redirecting money from other victims of abuse.

## 2. Violence in the Shelter

Applying landlord-tenant law to shelters also prevents them from efficiently evicting violent occupants, which has a significant negative impact on a shelter. In a traditional landlord-tenant relationship, if a tenant assaults the landlord, the landlord can bring assault charges against the tenant and begin eviction proceedings.<sup>137</sup> In such circum-

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133 See *Serreze*, 572 N.E.2d at 584 n.10. The court also noted that some states do not allow tenants to be evicted without cause. *Id.* See, e.g., MASS. GEN. LAWS ch. 239, §§ 1-1A (2007).

134 The result of higher costs is often a decrease in the scope of services offered. See *Weiner*, *supra* note 2, at 271 (“Funding gaps do not always translate to shelter closings. Shelters can cut services or lay off staff rather than close.”).

135 *Ann Arbor Tenants Union v. Ann Arbor YMCA*, 581 N.W.2d 794, 802 (Mich. Ct. App. 1998).

136 See *COLEMAN*, *supra* note 31; *Mullins*, *supra* note 1, at 249 (“The lack of emergency shelter for battered women is astonishing when compared to the demand for shelter services. For example, in 1984, 59% of battered women and children seeking shelter in New York City were turned away due to lack of space.” (citing *Maria Arias, Lack of Housing for Domestic-Violence Victims*, N.Y.L.J., July 26, 1988, at 3)); see also *id.* at 249-50 (“Shelters require funding for rent, upkeep, daily staffing and services. Battered women’s shelters are very dependent upon government money to survive financially. According to a nationwide survey of battered women shelters, 31% of those shelters responding to the survey depended entirely upon government funds, while 69% relied upon government money for over one-half of their operating budgets.”) (footnotes omitted).

137 See 49 AM. JUR. 2D *Landlord and Tenant* § 861 (2006).



stances, however, the violent tenant could be left alone pending the eviction proceedings, depriving her of the opportunity to harm others. In the case of shelters, on the contrary, if one of the occupants becomes violent, she is a threat to the other residents and staff, who cannot avoid her.<sup>138</sup> This has a stifling impact on the ability of the program to operate while awaiting the removal of the violent tenant. New residents who badly need the shelter's services could also be turned away pending the eviction of a resident.

The *Ann Arbor* court noted that “[m]any of the individuals who occupy the rooms suffer from various mental, emotional, or physical disorders.”<sup>139</sup> The possibility for harm to others in allowing potentially violent participants to remain on the property is apparent. Shelters would thus have a disincentive to accept someone who may pose a risk to other participants if the court-imposed costs of eviction are high. This would also increase the program costs because prospective residents would need to be properly screened to ensure that they were stable enough to participate and would not hurt others in the program.

### 3. The Impact on Other Residents

Finally, the strict nature of shelter programs and the volatility of the individuals involved make the facility the most effective authority to determine when a participant must be evicted. Many of the participants are victims of domestic violence and some are homeless. Part of the success of these programs is the shelter's extensive intervention in a resident's life, which gradually lightens to allow her to become self-sufficient.<sup>140</sup> If the participants must live in an environment of non-compliance or violence, they have even greater difficulty rejoining

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138 See COLEMAN, *supra* note 31 (“Shelters have a long-term deterrent effect on violence when they help women change their lifestyles, keeping them and their children safe from future abusive situations.”).

139 *Ann Arbor*, 581 N.W.2d at 796.

140 Women who have been residents at battered women's shelters cited these as the most effective programs in combating domestic violence. See COLEMAN, *supra* note 31 (citing Lee H. Bowker, *A Battered Woman's Problems Are Social, Not Psychological*, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE 154, 155–65 (Richard J. Gelles & Donileen R. Loseke eds., 1993)); see also Weiner, *supra* note 2, at 190 (“This radical . . . change in the social life of the battered wife sets the stage for a major reorientation of her approach to life. This unique coming together of women in time of adversity, helping each other, can provide a catalyst to recognizing and challenging oppression, moving women forward in their quest to eliminate it.” (citation and internal quotation marks omitted)).

society.<sup>141</sup> This would slow the rehabilitation process, thus preventing others from joining the program quickly. Given the complexity of these issues, the shelter is ultimately the most appropriate entity to monitor residents' progress and enforce its policies.

#### CONCLUSION

When a victim of domestic violence flees to a shelter, she is seeking refuge from an abuser. Although such women must undoubtedly be protected, applying the landlord-tenant framework to their stay in shelters may simply be counterproductive. Most importantly, landlord-tenant law would deprive shelters of their ability to easily remove problematic residents, even when they threaten the staff and other residents.

In sum, the expansion of protections under state landlord-tenant laws should not be an impediment to the effective operation of shelters. Such an expansion would only hinder the ability of helpful programs to function by increasing their costs and burdens. These organizations' scant resources should instead be spent helping as many women as possible, not battling litigious residents. Furthermore, shelters should have the autonomy to experiment with programs that have the most potential to help women effectively without intervention from the courts. Finally, shelters must be able to maintain the highest standards, hopes, and expectations for their residents, which is only possible with the deterrent effect of swift removal. Thus, while state statutory law on the issue is unclear, public policy loudly warns against applying the landlord-tenant framework to shelters.

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141 Some shelters allow children of battered women to join them. These impressionable children may be even more harmed in the event a noncompliant victim is allowed to stay in the shelter. See COLEMAN, *supra* note 31 ("There is substantial research evidence that children who witness domestic violence suffer short- and long-term adverse consequences and may be victims of abuse themselves.").

