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**Essential Services in Florida: Why Are Air Conditioners Not Considered An Essential Service?**

has been read by the undersigned. It is hereby recommended for acceptance by the faculty with credit to the amount of 3 semester hours.

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ESSENTIAL SERVICES IN FLORIDA: WHY ARE AIR CONDITIONERS NOT CONSIDERED AN ESSENTIAL SERVICE

A Master’s Creative/Applied Project

Submitted to the Faculty

of

American Public University

by

Lisa M. TurnerDummitt

In Fulfillment of the
Requirements of the Degree

of

Master of Arts

October 2017

American Public University

Charles Town, WV
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DEDICATION

I dedicate this research to my loving and supporting family. For my husband, who offered support and encouragement during the countless hours of research, thank you and I love you more than words can express. For my daughter, who offered love, encouragement and some laughter at the most challenging of times, thank you and know that I have and will always cherish our relationship.
ACKNOWLEDGMENTS

Special thanks to Dr. Becker, for all of her encouragement and enlightenment during this Capstone Project. I would not have been able to succeed without her.
This study investigates the legal relationship between the Florida and Nevada landlord-tenant statutes, specifically with a focus on when and how the legislative provisions might interpret air conditioning as an essential service and a condition of habitability of a rental property. The Nevada landlord-tenant statute is a significant point of comparison with Florida’s counterpart, due to the similarity of summer temperature gradients between the states, yet only the Nevada statute unambiguously cites air conditioning as a conditional consideration in defining essential services and habitability. The study reviews the relevant provisions of the Uniform Residential Landlord and Tenant Act, court opinions from Florida case law that have a bearing on the logic of the Florida approach to the topic, and selected secondary sources. It aims to draw a balanced conclusion regarding whether the State of Florida should amend its statute or rely on contractual relationships and local ordinances to address the issue. The research ends with arguments for and against the status quo, followed by recommendations for policy.
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I. Introduction & Background

Scientific research increasingly reminds the public of the dangers of heat related illness and death, while dense urban centers host increasingly congested concentrations of apartment tenants.¹ The Weather Channel warned, “Heat waves kill more people in the United States than any other natural disaster.”² Hospitals keep receiving elderly patients who tried to resist the high summer temperatures with portable fans; Dr. Houman Danesh of Mount Sinai Hospital alerted, “Older people living in hot apartments without air conditioning are at the highest risk for heat stroke.”³ News reports, as recently as July 2017, of a “Florida man [who] is facing criminal charges after his 8-month-old son died while being kept in a sweltering bedroom with no air conditioning.”⁴

Despite the seriousness of the risks of intense combinations of heat and humidity in rental units across Florida, without air conditioning specifically addressed in the rental contract, there is little assurance for tenants that a quick remedy will be at hand in case of any failure in their air

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conditioning units. Nevertheless, landlords have a responsibility to their tenants to maintain the premises. Florida statutory law excludes any direct mention of air conditioning among essential services in landlord-tenant relations.

A comparison between the landlord-tenant statutes in Florida and Nevada revealed an interesting contrast in the respective states’ treatment of air conditioning as an essential service and condition of habitability in rental property. This observation is striking, primarily due to the similarity in summer high temperatures between the states. Nevada includes a provision for treating air conditioning as an essential service if the rental property has an air conditioning unit or the rental agreement calls for one. Florida ignores consideration of air conditioning and instead defines essential services in terms of cold weather protections, which is similar to the common provisions of states in the north, where cold weather is a concern during the winter.

During the early decades of the nation’s existence, safety and health in residential life in most jurisdictions of the country were more thoroughly the responsibility of tenants, whose contractual understanding in rental arrangements amounted to “caveat lessee.” Thus, if a landlord provided an unsafe domicile, the prospective tenant had to inspect it personally to

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6 FLA. STAT. § 83.51 (2017)
7 Id.
8 Id.
9 NEV. REV. STAT. ANN. § 118A.380 (2017)
11 NEV. REV. STAT. ANN. § 118A.380 (2017)
12 FLA. STAT. § 83.51 (2)(a)(5) (2016)
13 Mansur v. Eubanks, 401 So. 2d 1328 (1981)
determine whether it was nevertheless worth the expenditure and commitment. As technology and building codes have become more complex, the landlords’ responsibility to act as the true steward of the rental property has increased. In light of this evolution of both standards and expectations, a 21st-century appraisal of the merits of treating air conditioning as an essential service is appropriate.

This investigation begins with a discussion of the historical background behind both the Florida and Nevada statutes, including a similar discussion about the origins and influence of the Uniform Residential Landlord and Tenant Act (URLTA). The paper then lays out the research problem, theoretical framework, and significance of the research. In subsequent sections, this research addresses the function and purpose of the provisions on essential services in landlord-tenant relations in general and the provisions of the URLTA in particular, followed by a discussion of the Florida and Nevada sources of statutory authority. This examination continues with an exploration into Florida case law pertaining to essential services and habitability in general, followed by a specific discussion of the place of air conditioning in considerations of essential services and habitability. Then this study proceeds to consider arguments in favor of and against the status quo in Florida. Prior to the conclusion of this inquiry, recommendations and implications of those recommendations for policy changes are presented.

A. Background into Florida Landlord and Tenant Statute

Understanding the history behind the Florida and Nevada landlord-tenant relations legislation is important. It is also important to distinguish the motivations behind the respective statutes and gaining insights into the possible reasons for the different consideration of air conditioning as an essential service.

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14 Brooks v. Peters, 157 Fla. 141, 25 So. 2d 205 (1946)
conditioning as an essential service in landlord-tenant relations. The Florida landlord-tenant statute dates back to 1959, at which time the protections under the law addressed only landlords’ rights. The statute only changed in a way that recognized tenants’ rights after the publication of the URLTA of 1974. Since the 1975 update, no significant change has occurred in Florida landlord-tenant legislation on the matter of what constitutes an essential service.

The 1959 Florida statute on landlord-tenant relations protected landlords’ right to enter a tenant’s premises after the tenant defaulted on rent and the right to demand double rent if the tenant refused to give up the property. Eighteen of the thirty-eight sections of Chapter 83 specified reasons for removing tenants. The 1967 update to the Florida statute eliminated the sections specifying multiple reasons for removing a tenant, replacing them with only one section to summarize such reasons. The statute created two additional sections to explain the landlord’s procedures for removal of tenants. Effectively, there remained no statutory protections for tenants, who therefore could only rely on the provisions of their rental agreements to support any claims against their landlords.

The 1975 Florida statute included a new subchapter, Part II, Residential Tenancies, which provided some protections for tenants. For example, section 83.45 addressed cases of “[u]nconscionable rental agreement[s].” Significantly, Section 83.51 specified the landlord’s duty to maintain the premises. Section 83.51 now specified the need for the landlord to

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17 FLA. STAT. § 83 (1959)
18 URLTA (1974)
19 FLA. STAT. § 83.05, § 83.06 (1959)
20 FLA. STAT. § 83.21-38 (1959)
21 FLA. STAT. § 83.20 (1967)
22 FLA. STAT. § 83.45 (1975)
23 FLA. STAT. § 83.51 (1975)
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provide “[h]eat during winter, running water, and hot water.”24 By comparison, the tenant’s responsibilities were greater, namely, to “[u]se and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators.”25 The 1989 amendments merely added Part III to the statute, which extend landlord protections to self-service storage space.26

The current version of the Florida Statutes, which continues to use language adopted in 1975, only mentions air conditioning explicitly in the context of the tenant’s obligations toward the landlord. Specifically, it states, “The tenant at all times during the tenancy shall....[u]se and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators.”27 This terminology is present in virtually the same order in the URLTA of 1974.28 However, the similar wording in the URLTA, which defines the landlord’s duties to the tenant, has noticeably lost the reference to air conditioning in its adoption into the Florida statute.29

The landlord’s obligations toward the tenant leaves out the explicit reference to air conditioning. Specifically, the relevant provision states, “Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for: ....[f]unctioning facilities for heat during winter, running water, and hot water.”30 Even when the clause in the current Florida statute addresses those services that the landlord must protect during

24 FLA. STAT. § 83.51(2)(a) (1975)
25 Id.
26 FLA. STAT. § 83.801 (1989)
27 FLA. STAT. § 83.52(5) (2017)
28 URLTA § 3.101 (1974)
29 URLTA § 2.104 (9174); FLA. STAT. § 83.51 (2017)
30 FLA. STAT. § 83.51(2)a5 (2017)
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a tenancy, it excluded the explicit reference to air conditioning, despite the additional examples covered. Specifically, the statute requires landlords to refrain from causing, “directly or indirectly, the termination or interruption of any utility service furnished to the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.”

B. Background into Nevada Landlord and Tenant Statute

The motivation behind the Nevada Fair Rental Housing Act (NFRHA) of 1977 was the proliferation of abuses on the part of tenants and landlords. In turn, this problem arose from “lack of exact terms of the rental between the parties,” a contractual issue that caused landlord-tenant disputes to consume a large amount of court time. Another important motivational aspect of the act was the recognition of the significant, rapidly growing representation of urban dwellings in the state. This rapid growth of urban dwelling development increased density of the urban populations, causing a rapid rise in landlord-tenant arrangements. The Nevada landlord-tenant statute dates from 1977, when the term “essential services” marked the central feature of the landlord’s duties to the tenant. The term remained until 2011, when the Nevada legislature added the word “items” to the list of examples, to correspond to its inclusion of door locks as an essential item. Among the definitions, the term “essential services” currently only appears in subsection 090 of the statute as a necessary concept for defining the word “exclude.” In this definition, the act of excluding may involve actual eviction or prohibiting entry using physical means, such as by locking doors, changing locks, or either actively or passively blocking entry.

31 FLA. STAT § 83.67(1) (2017)
32 NEV. Fair Rental Housing Act (NFRHA) NEV. Assemb. B. No. 173 (1977); NEV. Assembly Judiciary Committee, Minutes at 1 (Feb. 23, 1977)
33 Id. at 2
34 NEV. REV. STAT. § 118A.090 (2016)
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Importantly, excluding a tenant from the premises may also include causing any intentional interruption of “essential services,” including (as specified in the clause) “electric, gas, [or] water” services.\(^\text{35}\) The original 1977 NFRHA discussions by Martin Wiener of the Nevada Consumer Affairs Division included an observation about “habitability,” by which a landlord must provide “healthy, safe, and sanitary premises.”\(^\text{36}\) That comment simply stated the “[d]efinition of healthy, safe, and sanitary would be made in light of local building and health codes.”\(^\text{37}\) Commenting on the question of habitability, Clifford E. McCorkle from the Northern Nevada Apartment Owners’ Association referenced Oregon state law\(^\text{38}\) as the model for the Nevada statute.\(^\text{39}\) McCorkle stated that the Oregon statute’s examples of habitability included “plumbing facilities which are in good conditions, a water supply which is under the control of the landlord, capable of producing hot and cold running water, sewage disposal system which is in good working order, [and] heating facilities which conform to applicable law at the time of installation.”\(^\text{40}\)

The Nevada statute’s definition of “exclude” originated in Assembly Bill Number 173, dated April 11, 1977. The bill read “to evict or to prohibit entry by locking doors or...attempting to block entry, or to make a dwelling unit uninhabitable by interrupting or causing the interruption of electric, gas, water, or other essential services.”\(^\text{41}\) This definition survived intact by the bill’s final passage.\(^\text{42}\)

\(^{35}\) Id.
\(^{36}\) NEV. Assembly Judiciary Committee, Minutes at 4 (Feb. 23, 1977)
\(^{37}\) Id. at 4
\(^{38}\) ORS § 91.770 (1973)
\(^{39}\) NEV. Assembly Judiciary Committee, Minutes at 10 (Feb. 23, 1977)
\(^{40}\) Id. at 10
\(^{41}\) NEV. Assembly Daily Journal, Nevada Legislature, 59th Session at 28 (Apr. 11, 1977)
\(^{42}\) 1977 Statutes of NEV., Chapter 543, Assemb. B. No. 173 at 1331 (1977)
The early definition of habitability in Assembly Bill 173 took the form of declaring that a “landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition.” Habitability included expectations that the landlord apply due diligence in keeping these features in “good repair” or “good order,” phrases that repeated several times in the statue. Examples of such features include “[p]lumbing facilities[,]…[a] water supply[,]…[a]dequate heating facilities[,]…[e]lectrical lighting, outlets, wiring, and electrical equipment[,]…[a]n adequate number of appropriate receptacles for garbage and rubbish[,]…[and notably] [v]entilating, air-conditioning, and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord.” The sequence of the terms “ventilating, air-conditioning” is a characteristic of the URLTA of 1974. This reference to air conditioning survived through the bill’s final passage.

However, the reference to air conditioning disappeared in the 1985 amendment. According to the then-new version of Subsection 380, “[i]f the landlord is required by the rental agreement or this chapter to supply heat, running water, hot water, electric, gas, or other essential service…, neglecting to do so may justify certain legal remedies for tenants.” A subsequent clause seemed to have limited liability somewhat by providing that such neglect should “caus[e] the premises to become unfit for habitation” to rise to the necessary level of seriousness. After initially including the reference to air conditioning in the original 1977 act, pursuant to wording from the URLTA of 1974, the 1985 amendment removed it. The legislative record of the time

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43 NEV. Assembly Daily Journal, Nevada Leg. 59th Sess. at 30 (Apr. 11, 1977)
44 Id. at 30-31
46 NEV. REV. STAT. § 118A.380.1 (1985)
47 NEV. Assemb. B. No. 504 (Apr. 11, 1985)
48 Id. at 6
49 NEV. REV. STAT. § 118A.380.1 (1985)
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provided no rationale for the removal. Short of a direct comparison between the old and new versions of the relevant clauses, the casual observer might fail to notice the exclusion.

The inclusion of air conditioning as an essential service, contingent on whether the premises already include air conditioning units or the rental agreement specifies it, occurred in 1987, through Assembly Bill No. 381. In fact, that bill’s intent was solely to add air conditioning among essential services in this way: “relating to landlords, making air conditioning, if provided, an essential service which may not be willfully interrupted, and providing other matters properly relating thereto.” The bill placed the term “air conditioning” (originally written without the hyphen) in Section 118A.380(1) of the Nevada Revised Statutes.

In a bid to strengthen the NFHRA in 1999, Democratic Assemblyman David Goldwater introduced Assembly Bill 397, dubbed the Renters’ Bill of Rights. The press described this bill as a “watered-down” version of the bills previously submitted in 1995 and 1997. The list of “Tenants Rights” defined “[e]ssential services” as “heat, air, water, electricity, [and] gas.” Some questions concerning air conditioning surfaced as soon as the Nevada Legislature began deliberating over new amendments to the NFRHA in 1999. In the deliberations, Republican Assemblyman Bob Beers posed a question to the bill’s sponsors, asking how “issues surrounding air conditioning [would] be considered” if he were a renter of an apartment who paid for electricity on his own. As the session minutes explained, Beers then asked, “if the sponsor of the bill envisioned renters needing to ensure lease contracts included a working air conditioner.”

50 NEV. Assemb. B. No. 381 (May 9, 1987)
52 Id.
53 David Goldwater, Introductory Statement, Minutes of the Assembly Committee on Commerce and Labor, 70th Session, Item 13 at 17 (Mar. 17, 1999)
54 NEV. Assembly Committee on Commerce and Labor at 10 (Mar. 17, 1999)
Further, he asked about “the language change from electric to electricity in section 12.”\textsuperscript{55} To compound this question, John Sasser of Washoe Legal Service replied simply, “[T]he language in section 12 was a technical change.”\textsuperscript{56} This reply effectively ignored the more important question by Beers, namely, the matter of air conditioning. No one subsequently raised that particular issue in the meeting.

In further commentary, David Olshan, an attorney who typically advocated for tenants, commented that “[a]nother major problem that we see everyday” is substandard housing. During the summer months, we get calls every day from tenants whose air conditioners do not work.”\textsuperscript{57} Olshan continued by saying, “Let’s assume an air conditioner goes out in a Las Vegas apartment in July. If the landlord supplies air conditioning, this would qualify as an essential service. During the summer months, our office receives calls every day concerning inadequate, inefficient, or nonexistent air conditioning, ‘What do we tell these tenants?’”\textsuperscript{58}

This commentary is the clearest example of an argument, in the context of Nevada legislation, concerning the high summer temperatures characteristics of Nevada. For Olshan, it seemed to provide the most compelling case of a situation that demands an expeditious solution rather than the slow process of litigation. Olshan testified to the effect that timeliness is critical in such situations. Through the same argument, he effectively declared air conditioning an essential service under typical summer weather conditions.

Olshan continued with a list of possible ways for the tenant to respond:

\begin{itemize}
  \item \textsuperscript{55} Id. at 8
  \item \textsuperscript{56} Id. at 8
  \item \textsuperscript{57} David Olshan, Directing Attorney, Nevada Legal Services, Inc., \textit{Testimony in Support of AB 397}, Commerce and Labor Committee at 2 (Mar. 17, 1999)
  \item \textsuperscript{58} David Olshan, Directing Attorney, Nevada Legal Services, Inc., \textit{Testimony in Support of AB 397}, Senate Judiciary Committee at 1 (May 11, 1999)
\end{itemize}
Assuming the air conditioner has not been fixed after 48 hours, what can the tenant do? Under current Nevada law, the tenant can do one of three things: (1) Obtain other air conditioning service and deduct the cost from the rent; (2) Recover damages in court; and (3) Move out until the landlord fixes the problem.  

Olshan then worked through the practical steps that a tenant must undergo in the pursuit of each of the three possible solutions. He concluded with the observation that tenants who are free to remedy their own problems of this nature will generally increase landlords’ costs due to the cost disparity between the ad hoc remedies available to tenants and the systematic remedies (e.g., by fixing an installed central air conditioning unit instead of buying several window units) available to the landlord. Olshan testified to having witnessed precisely this kind of situation “literally thousands of times.”

Concluding that tenants effectively must endure the deprivation or move out, he remarked, “Nevada law is partly responsible for this unsatisfactory choice. Most unscrupulous landlords are aware of the vulnerability of tenants. This knowledge causes a significant number of habitability problems to remain unfixed.”

The 1999 amendments to the Nevada Revised Statutes slightly corrected the definition of essential services by listing the examples as “heat, air conditioning, running water, hot water, electricity, [or] gas.” In 2011, the Assembly added another example to the list, namely, a “functioning door lock.” It also updated the term “essential

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59 David Olshan, Directing Attorney, Nevada Legal Services, Inc., Testimony in Support of AB 397, Senate Judiciary Committee at 2 (May 11, 1999)
60 Id. at 5
61 Id.
63 NEV. REV. STAT. § 118A.380.1 (2011)
service” to “essential item or service.”\textsuperscript{64} The same change from “essential services” to “essential items or services,” remained throughout the statute in the 2011 amendments.

C. \textit{Uniform Residential Landlord and Tenant Act Influences}

Both the Nevada and Florida statutory provisions governing landlord-tenant relations originated with the URLTA. Precisely how to adapt that wording to their respective statutory purposes has been up to the state legislatures. Consequently, it is clear that the Florida legislature explicitly chose to remove the reference to air conditioning from its statute. By comparison, as the foregoing discussion has shown, the Nevada legislature initially adopted the URLTA wording in generally faithful form, suppressed the reference to air conditioning in subsequent legislation, and then recovered that reference later, in conjunction with greater pro-tenant activism in the late 1980s.

Background into the URLTA revealed that the American Bar Association (ABA) had drafted an exemplar for state legislation called the Model Residential Landlord and Tenant Code (1969).\textsuperscript{65} This effort’s main purpose was the growing recognition of the housing needs of the poor, who disproportionately entered into rental agreements in dense urban centers, where they typically rented at a disadvantage from well-established and well-protected landlords. In response to the ABA’s effort, the National Conference of Commissioners on Uniform State Laws (NCCUSL) began working on a uniform code in the pattern of the organization’s prior uniform codes, such as the Uniform Commercial

\begin{footnotesize}
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\item \textsuperscript{64} \textit{Id.}
\end{itemize}
\end{footnotesize}
ESSENTIAL SERVICES IN FLORIDA: WHY ARE AIR CONDITIONERS NOT CONSIDERED AN ESSENTIAL SERVICE

Code. The Commission thus produced the first complete draft of the URLTA in August 1972. After an approval period, the Commission forwarded its product to the ABA for review on January 31, 1973. The ABA responded with further points of interest to improve the document’s harmony and cohesion. The result was the incorporation of technical changes from a joint meeting between ABA and NCCUSL representatives to produce an updated draft in October 1973. On the understanding that further amendments would be forthcoming to correct residual issues of a technical nature, the ABA announced its endorsement of that version of the URLTA in February 1974.

The final version of the URLTA of 1974 included the following wording in reference to the landlord’s duties toward the tenant: “(4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him.” In turn, the tenant’s duties are similar: “use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises.”

In this way, the URLTA sought to balance the duties of both landlords and tenants. Reducing the phraseology for landlords compared to tenants consequently had the effect of upsetting the intended balance and preserving some of the power that already existed in landlords’ hands. The

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67 URLTA (1972)
69 Id. at 158
70 URLTA § 2.104(a)(4) (1974)
71 URLTA § 3.101(5) (1974)
ESSENTIAL SERVICES IN FLORIDA: WHY ARE AIR CONDITIONERS NOT CONSIDERED AN ESSENTIAL SERVICE

URLTA specifies the supply of “heat, running water, hot water, electric, gas, or other essential service” as the landlord’s duty.72

The NCCUSL’s 1972 release of the original URLTA version provided many states with a foundation for enacting new legislation to protect tenants’ rights prior to the final version of 1974. This early appearance provided advanced notice that a uniform code would appear, so legislators could propose legislation in their respective jurisdictions prior to 1974. This fact explains the transfer of wording from the URLTA to both the Florida and Nevada statutes, which consequently appeared in their new form, with certain tenants’ rights in place for the first time, within only a few years thereafter. For Florida, the new statutes appeared the year following the publication of the URLTA in its final form. For Nevada, the gap was three years. The clear presence of references to air conditioning in the act, which correctly date from 1972, may additionally explain why legal reform proponents have often referred to air conditioning as being among essential services.

II. Essential Services and Habitability in Landlord-Tenant Law

Essential services and habitability demand clear definition to support any exploration into the merits of including air conditioning as an essential service. As applied to landlord-tenant law, the definition of essential services has evolved over recent decades. In short, the loss of essential services may endanger the lives, health, or safety of people who depend on them, at certain times of the year and in certain locations under normal climatic conditions.73 As recently as the 1950s, it effectively referred to those minimal services that an entity was capable of providing rather than to an objectively

72 URLTA § 4.104(a) (1974)
73 URLTA, §2.104(a)(4) (2015)
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defined criterion of habitability.  Even today, the operational definition of essential services may be purely a function of whatever provisions are in a lease agreement. On balance, the definition provided in the URLTA seems to be the least ambiguous among any that are available. First, a landlord must ensure that a tenant has access to essential services. A landlord may either supply essential services or require the tenant to do so. The landlord has a responsibility to maintain the “facilities” in the rental unit necessary for the tenant to be able to access essential services. A typical array of essential services includes “heat, water, sewage disposal, and electricity.” Importantly, for the definition of essential services, a lack of essential services may merit a landlord’s provision of alternative housing to a tenant. Thus, a lack of essential services may render a dwelling uninhabitable, at least depending on what essential service is lacking.

A. Uniformed Residential Landlord and Tenant Act (URLTA)

The URLTA permits an interpretation by which one infers that the lack of certain kinds of essential services will result in a significant inconvenience for the tenant, while the lack of other kinds will render the dwelling uninhabitable. When one considers the examples cited in the URLTA (e.g., heat and water) and approaches the matter from the perspective of inclement weather, a lack of essential services makes a dwelling uninhabitable at least at certain times of year, under normal climatic conditions. While a lack of heat may amount to no more than an inconvenience at certain times of the year, it

75 Ira Meislik and Dennis M. Horn, The Commercial Lease Formbook: Expert Tools for Drafting and Negotiation, 2d ed. at 156 (2010)
76 URLTA, § 302(b) (2015)
77 URLTA, § 2.104(b) (2015)
78 URLTA, § 302(a) (2015)
79 Id.
80 URLTA, § 402 (2015)
becomes a serious impediment to living at other times. The URLTA contemplates the entire United States as its field of application, so the critical nature of a lack of heat under climatically and geographically unfavorable conditions is logically the focus of its definition of essential services.

In short, the loss of essential services may endanger the lives, health, or safety of people who depend on them, at certain times of the year and in certain locations under normal climatic conditions. By this definition, the inclusion of heat as an essential service in the Florida statutes is theoretically no more than a contingency, since a tenant in Miami will find the lack of heat no more than an inconvenience in the winter. The fact that the Florida statutes include a reference to heat renders it an essential service by statutory construction. By comparison, the absence of any reference to air conditioning in the Florida statutes contradicts the logic behind the inclusion of heat.

As revised in 2015, the URLTA consists of a model statutory corpus that offers a detailed but flexible series of provisions that state legislatures may adopt at their discretion. The URLTA’s existence provides a basis for harmonizing state laws based on the considered reasoning of an association of practicing attorneys from a variety of experiential backgrounds. In turn, commonalities across states in terms of statutory provisions in the domain of landlord-tenant law substantially simplify the legal process and clarity of judicial decisions both for practitioners of the law and for the parties to rental agreements. This harmonization effectively

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81 URLTA, § 2.104(a)(4) (2015)
82 FLA. STAT. § 83.56(1)(a)(b) (2017)
84 URLTA, §2.104(a)(4) (2015)
85 URLTA (2015)
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reduces both the complexity of the law and opportunities for contradictions to emerge in case law. Overall, to the extent that states adopt provisions from the URLTA, they enhance the efficiency and transparency of the legal process itself.

The URLTA defines essential services as including “heat, hot and cold running water, sewage or septic disposal, and electricity.” The URLTA further specifies that the definition includes gas or air conditioning if required to be supplied to a tenant by the lease or law. On this latter point, a tenant may conceivably accept the prospect of living in a house that lacks air conditioning as a matter of conscious choice. However, if the tenant chooses to embrace a rental agreement upon witnessing the presence of an air conditioner on the premises, this observation effectively activates the fact of air conditioning as a part of the rental agreement. That is, the rental decision reasonably rests on the combination of literal contractual provisions and the observable conditions of the premises to which the contract refers. Moreover, the URLTA’s wording after its statement about the provision of air conditioning suggests that the landlord’s supply of gas or air conditioning is an essential service if the absence of these amenities “would create a serious threat to the health, safety, or property of the tenant or immediate family member.” Consequently, the singular exception to the matter of incorporating a contractual expectation of a working air conditioner into a rental agreement, once the tenant has witnessed the air conditioner’s presence, is the location of the premises in a temperate climate rather than one in which extremes of heat may occur. Section 302 of the URLTA addresses the landlord’s “duty to maintain [the] premises in habitable condition.” This section adds further detail to the question of essential services. The URLTA specifies that one of the obligations of the landlord

86 URLTA § 2.104(a)(4) (2015)
87 Id.
88 Id.
89 URLTA § 302(a) (2015)
is to “have in good repair other facilities and appliances supplied or required to be supplied by
the landlord.”90 This provision effectively strengthens the matter of whether the landlord must
maintain and repair an air conditioner to support its continual operation, as the clause offers no
exception here based on judgments about the temperate nature of the climate. Consequently, if
the landlord provides an air conditioner, then the landlord must maintain it. This inference
accordingly dovetails with that based on the contractual implications of a prospective tenant’s
witness of the presence of an air conditioner on the property prior to signing the rental
agreement.

Importantly, the URLTA also provides an exception to the requirement to provide air
conditioning, but only in the form of a rental agreement provision that mandates that the tenant
contract with an energy provider to maintain the usability of appliances of all kinds in the
household. Specifically, the provision states that “the lease may require an account with a utility
provider of an essential service to the dwelling unit be in the name of the tenant and the tenant
pay the periodic cost for the service.”91 The provision continues with the declarative statement,
“If the service is not provided because the tenant fails to pay for the service, the landlord does
not fail to comply with this subsection.”92 Despite the statement’s clarity, it leaves open the
question of a landlord’s duty to maintain a reasonable level of safety in times of extremes of
heat. The URLTA’s tenor seems to suggest that the landlord may ignore the consequences of a
tenant’s own unwillingness or inability to pay for essential services. As long as the landlord has
provided working implements and kept them in operational order, the landlord has met the
URLTA’s standards.

91 URLTA § 302(b) (2015)
92 Id.
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B. Florida Statute

Chapter 83 of the Florida Code specifies certain legal obligations of the landlords in maintaining the habitability of occupied rental property. The statute includes a provision in the event there is no local regulation available to mandate minimum acceptable levels of habitability. Such regulation may otherwise come from building codes, housing codes, or health codes. In the absence of such regulation, the landlord must “maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair.” To define “good repair,” the statute specifies that the structural features must be “capable of resisting normal forces and loads.” In addition, “the plumbing [must remain] in reasonable working condition.” Thus, this statutory provision focuses on the structural state of repair rather than essential services. On the latter issue, the statute addresses one aspect of health by providing for the “extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs.” Other clauses specify the landlord’s duty to provide the “clean and safe condition of common areas,” “garbage removal,” and “[f]unctioning facilities for heat during winter, running water, and hot water.

The reference to heating for the winter is a distinctive curiosity in the Florida statute, given the absence of any reference to hot weather. It is thus reminiscent of what one would expect in a northern state’s statutes rather than in those characteristic of a state with a subtropical climate. While cold temperatures sometimes affect Florida, especially in the northern portion of the state, the extremes of heat are much more common. In Tallahassee, in the north of Florida,

93 FLA. STAT. § 83.56(1)(a) (2017)
94 FLA. STAT. § 83.56(1)(b) (2017)
95 Id.
96 Id.
97 FLA. STAT. § 83.56(2)(a)(1) (2017)
98 FLA. STAT. § 83.56(2)(a)(3-5) (2017)
the average low temperature in the coldest month (January) is 39 degrees Fahrenheit, a cold temperature to be sure, but one that is appreciably above freezing. In contrast, the mean high temperature in Miami during the warmest months (July and August) is 91 degrees Fahrenheit. While such a temperature is comfortable in the presence of sufficient wind, it can increase considerably inside a small dwelling with no air circulation. Miami’s low temperatures are considerably more comfortable than those of Tallahassee, registering an average of 60 degrees Fahrenheit in January.

C. Nevada Statute

The statutory sources of authority in both Florida and Nevada are simple, in that most of the necessary information is present in a single chapter of each code. The Florida Statutes take a minimalist approach, while the Nevada statutes provide a relatively elaborate description of the landlords’ obligations toward tenants. In terms of elaboration versus minimalism, the difference may be a function of difference in legal philosophy; Florida legislation anticipates contract law to occupy the principal position in informing landlord-tenant relations, while Nevada legislation prefers to standardize the landlord-tenant relationship through a set of commonly understood statutory provisions. If this inference is valid, then the overarching line of distinction between Florida and Nevada may simply be the role that the respective legislatures expect freely formed contractual provisions to occupy in the matter.

Nevada statutes require landlords to maintain existing air conditioning units in working order, “if supplied or required to be supplied by the landlord.” As in the case

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100 Climate Florida: Miami, U.S. Climate Data (last visited on Aug. 24, 2017), http://www.usclimatedata.com/climate/miami/florida/united-states/usfl0316
101 NEV. REV. STAT. § 118A.290.1(i) (2017)
of the URLTA,\(^{102}\) one must therefore consider the combination of what the prospective tenant witnesses upon investigating the property prior to signing the rental agreement and what provisions are present explicitly in the contract itself. If the landlord has provided an air conditioner, the statutory wording permits no exception to occur with any form of waiver in the contract itself. The only way that a landlord could bypass the obligation to maintain and repair air conditioning would be to refrain from providing the residence with such appliances or systems and accordingly communicate this fact clearly to the prospective tenant.

In the Nevada statute, the assurance of maintaining and repairing any existing air-conditioning units is part of the definition of essential services. “If the landlord is required by the rental agreement or this chapter to supply heat, air-conditioning [\textit{sic}], running water, hot water, electricity, gas, a functioning door lock or another essential item or service...,”\(^{103}\) then the landlord is in breach of statute by failing to do so. Thus, air conditioning is an essential service.

While this statement may at first appear only to requiring the supply of air conditioning if a clause to that effect is present in the rental agreement, the reference to the chapter additionally mandates keeping any such systems in working order if they are present on the premises when the tenant signs the rental agreement. Therefore, while the Nevada statute permits an exception to the mandate to provide air conditioning, that exception only applies if the landlord ensures that no air conditioning is present on the premises at the time of the signing of the rental agreement.

\(^{102}\) URLTA, § 2.104(a)(4) (2015)
\(^{103}\) NEV. REV. STAT. § 118A.290.1 (2017)
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Between the Florida and Nevada statutory authorities, Florida appears to try to accommodate greater dependency on contract law than on the law surrounding landlord-tenant relations, while Nevada takes the position that contract law is inadequate for managing significant aspects of landlord-tenant relations. These differences are visible primarily in how elaborately the Nevada statute has treated the topic compared to the Florida statute. The apparent freedom of Florida landlords to formulate rental contracts with no provisions for air conditioning remains a striking point of contrast.

III. Florida Case Law Regarding Essential Services & Habitability

A key case in the early evolution of this legal area appeared to be the source of unfavorable decisions for tenants in cases involving disputes based on inadequacies in essential services.104 Brooks featured a landlord’s waiver of responsibility for household appliances in a modification of a lease agreement. The case presented the special case of a waiver, which is currently legal in Florida.

While landlords are responsible for appliances that are present on the premises of a rented room or building at the time of signing the rental agreement, this responsibility ceases when, pursuant to the terms of a property rental, the tenant is free to install appliances and fixtures without the landlord’s active consent. In Brooks,105 the tenant claimed landlord negligence in the wake of a gas explosion associated with a faulty water heater. However, an agreement between the landlord and tenant had transferred the responsibility of control and maintenance of the gas unit to the tenant. This agreement permitted the tenant to assume complete control of the unit, including altering its configuration, replacing it, or removing it. While the unit was thus under the tenant’s

104 Brooks v. Peters, 157 FLA. 141, 25 So. 2d 205 (1946)
105 Brooks v. Peters, 157 FLA. 141, 25 So. 2d 205 (1946)
control, the explosion occurred. This transfer of responsibility would be infeasible under the URLTA, which prohibits a landlord from transferring responsibility for essential services to tenants. Florida Statutes provide no such prohibition.

*Brooks* clearly included the unusual fact of a *post hoc* agreement between the landlord and the tenant by which the tenant would assume control of and responsibility for the appliances installed on the premises. Some later court decisions read *Brooks* as absolving the landlord from responsibility for appliances upon the transfer of control in the ordinary fashion of the tenant’s possession of the premises. This misreading eventually caused a conflict in the case law, as *Alexander* instead mandated that landlords fully inspect and ensure the sufficient working condition of all appliances for essential services.

An exception in the case of installing an air-conditioning unit would seem to be conceivable by the same logic. That is, if a tenant installs an air-conditioner pursuant to an agreement with the landlord, but the air conditioner fails to function, the landlord would be free of liability for any injury that might result from that failure, such as the occurrence of heatstroke. In this sense, the principle by which a tenant who willingly assumes a risk effectively removes responsibility for subsequent injury from the landlord.

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107 *Brooks v. Peters*, 157 FLA. 141, 25 So. 2d 205 (1946)
108 *Brooks v. Peters*, 157 FLA. 141, 25 So. 2d 205 (1946)
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In *Alexander*\(^\text{111}\), the Florida Court of Appeals for the Third District reversed a lower court’s prior decision that a tenant was at fault in the case of her knowledge of a possible gas leak. The court determined that the tenant’s knowledge was different from the tenant’s appreciation of the risk of an explosion. The landlord should have known about the possible gas leak (consisting of a physical deformity in a gas cap in the household and the associated smell of natural gas) because a landlord is liable for any condition discoverable through ordinary inspection.\(^\text{112}\)

Consequently, the landlord was at fault for the gas explosion that occurred while the tenant was on the premises. The landlord’s mandate to exercise reasonable care to keep common areas clean and safe produces an obligation to act in response to knowledge, such as from a tenant, of a possible cause of unsafe conditions. The *Alexander* standard had clearly mandated that landlords inspect the rental property before tenants start to occupy it, as opposed to abruptly ending the landlord’s responsibility for essential services upon the signing of the rental agreement.

Subsequent lower court decisions drew from *Brooks* to justify a general *caveat lessee* theory instead of only applying the precedent to subsequent cases of tenants’ voluntarily assuming responsibility for essential services.\(^\text{113}\) In *Mansur*\(^\text{114}\) the tenant took early possession of the rental property and turned on the gas, unaware of a gap between the stove and gas pipe. An explosion occurred when the tenant struck a match near the hot water heater. The First District Court of Appeals of Florida affirmed the lower


\(^{113}\) *Mansur v. Eubanks*, 368 So. 2d 645 (1979)

\(^{114}\) *Mansur v. Eubanks*, 368 So. 2d 645 (1979)
court’s ruling the tenant “assumed the risk as to the condition of the premises.”115 The Supreme Court of Florida ruled the landlord had a responsibility to the tenant to inspect and make needed repairs to the rental property prior to allowing the tenant to take possession.116 Mansur117 resolved the conflict in case law created in the misreading of Brooks118 by reaffirming the Alexander119 rule

In Bennett,120 the tenant had slipped and injured herself due to water buildup in a common area of the apartment complex. The tenant had previously asked the landlord to investigate the possibility of a water leak and to repair it, but the landlord neglected to do so. The act of slipping was apparently the product of the unsafe condition that resulted from the water. Therefore, the Florida Court of Appeal for the First District reversed a lower court’s finding in favor of the landlord and instead held that the landlord’s knowledge of the condition was sufficient to render the landlord liable if any injury occurred because of it.

The requirement that a landlord provide essential services can cause a greater breach of duty when the landlord’s failure to do so causes tenants to undertake alternative means of remedying the negligence. In Lifter,121 the landlord had failed to ensure a continual provision of hot water to the bathroom. To remedy this defect, the tenant found it necessary to boil water in the kitchen and carry it through the house, thereby gradually

115 Mansur v. Eubanks, 368 So. 2d 645 (1979)
116 Mansur v. Eubanks, 401 So. 2d 1328 (Sup. Ct. 1981)
117 Mansur v. Eubanks, 401 So. 2d 1328 (Sup. Ct. 1981)
118 Brooks v. Peters, 157 FLA. 141, 25 So. 2d 205 (1946)
120 Bennett v. Mattison, 382 So. 2d 873 (1980); Fla. Ct. App. 1st Dist. (Apr. 24, 1980)
building a warm bath in the bathtub. In one of the attempts to carry the boiling water
through the house the tenant accidentally collided with her child and poured the boiling
water on him, causing serious burns. The tenant then sued the landlord for having failed
to provide hot water, as mandated by Florida statute. The Florida Court of Appeals for
the Third District upheld the lower court’s verdict that the landlord’s failure to provide
hot water was the proximate cause of the tenant’s behavior, including her accidental
burning of her young son. The court reasoned that violation of the statute brings more
than merely an affirmative action to correct it; rather, it brings the full measure of the
consequences that may occur in the wake of such negligence in the form of the tenant’s
effort to make up for the deficiency in essential services.

While most case law at the level of Florida Courts of Appeal or the Florida
Supreme Court have decided in favor of tenants, the decisions only provide indirect
guidance on the matter of air conditioning. The decisions place primary responsibility on
the landlord to ensure tenant’s access to essential services, to the point of declaring a
landlord culpable for injuries that might occur pursuant to tenant’s effort to remedy
deficiencies in landlord’s performance of duty. Although no case law appears to address
the matter of air conditioning directly, the fact that most dwellings today include air
conditioners may ultimately serve to lay an added burden on landlords to ensure the
functionality of those appliances. Until the explicit reference to air conditioning occurs
in either Florida Statutes or case law, the only basis for requiring a landlord to provide air
conditioning remains in the terms of the rental contract itself.

IV. Air Conditioning as an Essential Service

122 FLA. STAT. § 83.51(2)(a)(5) (2017)
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The consideration of whether to construe air conditioning as an essential service rests on more than one factor. First, pursuant to the URLTA, there is the question of whether the absence of air conditioning can render a dwelling uninhabitable. Second, pursuant to the observation that the landlords’ responsibility for providing essential services has increased in proportion to increase in complexity of housing structures over time, one must consider the relevance of technological advancement.

A. Effects of Air Conditioning Deprivation

The logic in the URLTA’s definition of essential services points to the role of a given resource under climatic and geographical conditions that are least favorable within the range of normal conditions. For example, in Northern Florida, the area’s lows are approximately 39 degrees Fahrenheit and based on local weather warnings of potential freezes, one can expect heat would be considered an essential service. The relevant question is whether temperatures in any part of Florida reach a level beyond which a dwelling is no longer habitable. Dangerous heat waves often occur in Florida. In these cases, the actual temperature may only reach the mid 90s, but the region’s high humidity raises the heat index to intolerable levels. One of the dangers associated with

123 URLTA § 402 (2015)
124 Mansur v. Eubanks, 401 So. 2d 1328 (Sup. Ct. 1981)
a high heat index is heatstroke.\textsuperscript{128} If the status of a dwelling under periodic conditions of Florida heat waves renders the dwelling a potential physical injury, air conditioning is an essential service.\textsuperscript{129}

In the case of low temperatures, a dry dwelling with reasonably sound doors and windows is capable of mitigating the cold significantly. In contrast, a similar dwelling will contrarily exacerbate the conditions of a heat wave. Certainly, freezing temperatures can fall to a point of utter intolerability, so virtually all dwellings eventually need a source of heat to maintain habitability\textsuperscript{130}. As for rising temperatures, if the only remedy is to escape from the dwelling, then by definition, the dwelling has become uninhabitable.

\textbf{B. Effect of Technology on Acceptable Standards}

The URLTA explicitly references the fact of modern technology as a relevant factor in determining the extent of a landlord’s duties to a tenant.\textsuperscript{131} Section 302 of the code recognizes that modern conditions require the proper maintenance and operation of rental housing.\textsuperscript{132} Modern conditions have effectively changed the architectural standards of apartment construction.\textsuperscript{133} An example is the standard expectation of central air conditioning in new


\textsuperscript{129} FLA. STAT. § 83.43 (1) (2017)


\textsuperscript{131} URLTA § 102.9 (2015)

\textsuperscript{132} URLTA § 302(a)(11) (2015)

\textsuperscript{133} Dave Clark, \textit{Adapting an Older Building for a New Use} (Apr. 01, 2008) http://www.buildings.com/article-details/articleid/5837/title/adapting-an-older-building-for-a-new-use
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residential structures.\textsuperscript{134} This expectation leads to designs that no longer look to external ventilation or high ceilings to accommodate high temperatures; rather, they now anticipate practically airtight units, linked only by a network of airshafts that transmit the cooled air throughout the complex.\textsuperscript{135}

When a building’s very design anticipates the constant operation of central air conditioning, it conversely exacerbates the effects of machine failure. The duty to maintain and repair air conditioners in these buildings are more important than it would be the case of old-fashioned units that used ample external ventilation and high ceilings to mitigate the effects of high temperatures.\textsuperscript{136} From this perspective, one may argue that the urgency of repairing a broken air conditioner in a retrofitted building is lower than that of a modern building.\textsuperscript{137} In this respect, the URLTA’s mention of “modern conditions”\textsuperscript{138} applies less to retrofitted buildings than to the modern forms of architecture that anticipate central air conditioning as a standard feature.\textsuperscript{139}

\textit{Mansur,}\textsuperscript{140} cited changing times have implications for the expected level of responsibility for landlords to assume regarding their own property. That is, advancing technology has substantially shifted the responsibility for determining the nature of potential problems in a

\begin{footnotesize}
\textsuperscript{137} Id.
\textsuperscript{138} URLTA § 302(a)(11) (2015)
\textsuperscript{140} Mansur v. Eubanks, 401 So. 2d 1328 (Sup. Ct. 1981)
\end{footnotesize}
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dwelling from the tenant to the landlord.141 As stated in Mansur142, “We live in an age when the complexities of housing construction place the landlord in much better position than the tenant to guard against dangerous conditions.”143 The technological means that are currently available for monitoring certain aspects of functionality in a dwelling, notably those associated with new lighting systems configured to save energy, often make it easy for the landlord to monitor a property and respond to signs of undue wear and tear.144

This section considered the effects of air-conditioning deprivation and the effects of technological advancement on acceptable standards. It observed that high temperatures, combined with high humidity, as is common in Florida’s southern counties, pose an identifiable risk to tenants in cases of air conditioning deprivation.145 The logic by which modernity has increased the burden on landlords to maintain structures seems most valid in the cases of buildings with designs that inherently anticipate central air conditions.146 It seems less

142 Mansur v. Eubanks, 401 So. 2d 1328 (Sup. Ct. 1981)
applicable to retrofitted tenements, except where such retrofitting also involved obstructing ventilation passages that were present in the buildings’ original designs. 147 Local ordinances have mandated structural changes in conjunction with retrofitting, which would have any kind of anti-ventilating effect. 148 Dangers of high temperatures and humidity during summer heat waves may create a compelling case to increase the burden on landlords to repair broken air conditioning units expeditiously and maintain them with conscientious regularity. 149

V. Analysis of Florida Statute Modification

To reach a conclusion over whether the Florida statute is sufficient in its current state or instead merits modification, it is necessary to consider both arguments for modifying and those opposing the modification.

A. Argument Against Modifying the Florida Statute

The main argument against modifying the Florida statute, which currently makes no reference to air conditioning, is that contractual provisions have provide a remedy in the majority of actual cases. 150 Adding an explicit reference to air conditioning among the landlord’s duties to the tenant would unnecessarily complicate the judicial remedies.

148 FLA. STAT. § 553.995 (2017)
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Over specification of the examples of essential services in the Florida statute, such as listing air conditioning, followed by a series of additional items that are implied, may over simplify the statute and cause the judicial decisions to revolve around a literal wording rather than the practical effect. 151

B. Arguments in Favor of Modifying the Florida Statute

Arguments for Florida Statute modification revolve around the potential for a landlord to escape culpability for the endangerment or harm to a tenant that may occur due to the inoperability of an air conditioner. 152 Despite tenants’ access to informational resources online, renters tend to have leaner budgets than homeowners and have little time or opportunity to do research to protect themselves. 153 Florida has a high percentage of elderly tenants who are less likely or unable to turn to self-service remedies on the internet, which make the expectation of self-service remedies unrealistic. 154

The loss of essential services may endanger the lives, health or safety of people who depend on them. 155 While the URLTA prohibits a landlord from waiving the duty to provide essential services and habitability to tenants, Florida statute permits such a waiver to occur. 156 This ability to waive landlord obligations effectively transfers

151 NEV. Assembly Judiciary Committee, Minutes at 4 (Feb. 23, 1977)
152 Lisa Oram, Do you have a Right to Air Conditioning (Jul. 12, 2017) https://www.furnacecompare.com/air-conditioners/is-air-conditioning-a-right.html
153 Jonathan Lansner, Homeowners worth $197,349 more than renters, census study shows (Jun. 5, 2017) http://www.ocregister.com/2017/06/05/homeowners-worth-197349-more-than-renters-census-study-shows/
156 Thompson v. Rock Springs Mobile Home Park, 413 So. 2d 1213 (1982)
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responsibility for essential services to the tenant if the tenant agrees to assume it.\textsuperscript{157} If landlord-tenant relations rest substantially on the rental agreement and minimally on statute, then the use of poorly or deceptively written rental agreements may compromise the tenants’ rights.\textsuperscript{158} Landlords are unduly benefited in poorly or deceptively written rental agreements.\textsuperscript{159} Agreements that are legally correct and precisely constructed equally benefit both landlord and tenant.

VI. Conclusion

The remedy of simply adding the term “air conditioning” to the list of examples of essential services in the Florida statute would align the Florida statute with the requirements for essential services in the URLTA.\textsuperscript{160} Such a change would be consistent with the developments in technology, including both the reliability of air conditioning systems and the ability of landlords to monitor system performance and activity.\textsuperscript{161} Between the early 1970s, when Florida legislature wrote the original statute and the early 21\textsuperscript{st} century, technology in air conditioning has made substantial improvements.\textsuperscript{162} Landlords have already adapted to 21\textsuperscript{st} century tenant expectations on the matter of air conditioning.\textsuperscript{163}

\textsuperscript{157} \textit{Brooks v. Peters}, 157 FLA. 141, 25 So. 2d 205 (1946)
\textsuperscript{158} \textit{Id.}
\textsuperscript{160} URLT A §102(10), § 302(13)(b) (2015)
\textsuperscript{161} URLT A § 102.9, § 302(a)(11) (2015)
\textsuperscript{163} Dave Clark, \textit{Adapting an Older Building for a New Use} (Apr. 01, 2008) http://www.buildings.com/article-details/articleid/5837/title/adapting-an-older-building-for-a-new-use