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Rent Strikes and the Law: The Ann Arbor Experience

by Stuart Katz

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A rent strike, if taken seriously by its proponents and not used solely to attract the attention of sympathetic politicians, can be an extremely powerful weapon. It is a strategy of economic pressure, forcing landlords to accede to specific demands through the only language they understand: the loss of profits and the inability to meet financial commitments. Since January, 1969, tenants in Ann Arbor, Michigan, have, through the Ann Arbor Tenants Union, been conducting a rent strike against several major private property owners and managers. The strike is one of the largest ever organized in the United States—at one point last spring, 1200 strikers had paid more than \$140,000 into an escrow fund. The role that law played in the strike is one of the important, and perhaps unique, contributions that the Ann Arbor experience has made to the fast-growing tenants' rights movement and to other major social reform movements as well. My purpose here is to explore that role.

In the last ten years, there have been successful strikes both in public and private housing. The most

spectacular of these was the 1969 St. Louis public housing rent strike, which lasted ten months and led to major advances in public housing. Innovative policies that grew out of the St. Louis strike include an upper limit of 25 percent of a tenant's income for rent, creation of a Tenant Affairs Board, membership of two tenants on the city housing authority, and, most important, eventual administration of housing projects by tenant-controlled management corporations.

In Detroit, a rent strike against private slumlords led to the formation of the United Tenants for Collective Action. In Washington, D. C., more than \$40,000 has been withheld in a rent strike at the Trenton Terrace Apartments. The U.S. Court of Appeals for the District of Columbia has ruled that the fund is legally invulnerable until the landlord successfully sues the individual tenants. Other important examples of use of the rent strike strategy include the 1968 Detroit public housing strike and the Harlem strikes of 1963 and 1964.

The impetus for the Ann Arbor strike grew out of the nature of the housing market in Ann Arbor, which is an exaggerated, but not qualitatively different, form of the housing situation in other parts of the country. The combination of rapidly rising university enrollment, the high cost of financing construction, tight money, and collusion among landlords has created a landlord's market to such a degree that, according to the current director of the Office of Student Housing at the University of Michigan, Ann Arbor may face an absolute housing shortage by September, 1970. These conditions have led to spectacularly high rents (four-man apartments average over \$310.00 per month; average rent for all apartments is \$87.50 per person per month for an eight-month lease), poor maintenance, required payment of three or four months' rent in advance, failure by landlords to return damage deposits and commuting by both university and non-university employees who cannot afford to rent in Ann Arbor. The demands of the strike, therefore, have fallen into two categories: (1) landlord

recognition of the Ann Arbor Tenants Union (AATU), and (2) massive housing construction by the University of Michigan. Recognition of the AATU would give the organization greater legitimacy, making it a more effective agent in dealing with landlords, especially on short-term problems like lease conditions, maintenance, etc. University commitment to a large-scale housing program is essential because without such direct intervention in the housing supply, existing capitalist mechanisms will continue to keep the market tight and maintain present conditions. In addition to demanding that the University fund such housing, the AATU has demanded that all aspects of the housing program be controlled by tenants and that the housing be open to persons who are not students.

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I. The Law as a Tactic

Until the major demands of a rent strike are met, or until the evolution of the movement and the response of its opponents necessitate a new strategy, the law can be used both to protect the strikers and to educate them.

A. Defensive Action

Collective action by tenants should employ tactics that help keep strikers from being thrown out of their apartments while also serving the strategic goal of putting economic pressure on landlords. Where, as in Ann Arbor, there is a suitable statutory framework, the law can provide substantial support for these tactics.

In 1968, the Michigan state legislature passed five statutes dealing with tenants' rights and housing code enforcement. Two of these concern public housing and are not directly relevant to the Ann Arbor experience, where all struck housing is privately owned. The three other laws (Michigan Public Acts 295, 286 and 297, respectively) are directly concerned with private housing. M.P.A. 295 provides that in any rental of residential premises a landlord implicitly covenants that the rental property is in fit repair when the

tenant moves in and that the landlord will maintain it in reasonable repair. M.P.A. 286 establishes a new and stricter housing code enforcement procedure. M.P.A. 297, which has proved to be the crucial statute for the rent strike, gives tenants greater protection from eviction. It provides, first, that a tenant may raise code violations or breaches of the lease as a legitimate defense for not paying rent. Second, it provides protection against retaliatory eviction when a tenant attempts to exercise his legal rights against the landlord. Finally, it provides that the bond required to be posted for an appeal of an eviction must be "reasonable." (A bond equal to nine months' rent was formerly required.) At the time of their passage, these laws appeared to be a major step forward for tenants because they dealt with several of the most obnoxious of the relevant common law doctrines (e.g., the rule that the obligation to pay rent is independent of any obligation the landlord might have to maintain the premises). In reality, however, they have not significantly changed things. When legal action is initiated by the landlord, it is rarely carried beyond the initial stages of the legal process. In most cases the landlord is granted a summary judgment against the tenant because the tenant fails to appear in court. This happens because, as is so often the case, the tenant cannot afford a lawyer or does not understand his rights. When the tenant initiates legal action, by suing the landlord, as frequently happens, the landlord has the distinct advantage of being the defendant. He can use legal technicalities to delay judgment so that the tenant, because of rapidly accumulating legal costs, has to drop the suit.

For these reasons, the basic legal strategy chosen in Ann Arbor was a defensive one. Once tenants were educated as to their rights and could be provided with adequate legal representation through funds collected by the AATU, the strike could begin. Tenants began withholding their rent to exert economic pressure on the landlord. In retaliation, the landlord was forced to sue the tenant. Armed

with knowledge of his rights and with legal representation, the tenant then replaced the landlord as defendant and was able to use all the dilatory tactics once considered the landlord's sole prerogative.

In a massive rent strike, of course, the effect of a single eviction case is multiplied many times. The court dockets become so jammed that the number of judgments reached over any reasonable period of time (whether in the landlord's or the tenant's favor) affects only a tiny fraction of the total number of strikers. Maximum economic pressure is exerted against the property owners, while the strikers remain in occupation of their apartments. The following facts provide evidence that this simple strategy has worked well in Ann Arbor: (1) during the first four months of the strike, fewer than five per cent of the strikers had been through the courts; (2) during the fall of 1969, when the strike was renewed after a summer lull, the same pattern developed, again creating a huge backlog of cases, and (3) municipal court dockets are still filled and will probably remain so for several months, even though recent court decisions have taken much of the sting out of the strike strategy. In cases already litigated (nearly all of which were before juries) tenants have received rent reductions of up to 70 per cent of the back rent. Furthermore, if a tenant pays what the court has decided he owes within ten days after a judgment is reached, he cannot be evicted. The tenants, in short, have been able to strike with virtual impunity.

Members of the AATU expected from the outset, of course, that neither the landlords nor the courts would maintain their initial approach to dealing with tenants, particularly as the effects of the strike became more telling. These expectations began to be confirmed as early as two months after the strike began. The most recent action of landlords and courts have forced the AATU to consider the rent strike as only a secondary strategy in building the tenants' movement. Discussion of the situation will be deferred until the final remarks of the paper.

B. Affirmative Action

The tactic outlined above is designed to force landlords to take the initiative. In addition, the AATU will take affirmative action if the resources are available and circumstances merit. In Ann Arbor, there have been three such situations.

The first was obtaining the disqualification of two judges who had clear conflicts of interest in landlord-tenant cases. The most immediate effect of these disqualifications was to channel all eviction cases to the single remaining judge in Ann Arbor. This further slowed the litigation process.

The second situation was an anti-trust suit initiated by the AATU in the form of a class action. Tenants representing this class have charged that certain landlords in Ann Arbor are in violation of the Sherman and Clayton Acts. If successfully prosecuted, the suit will cost the landlords a substantial amount of money in damages.

The third was the initiation of criminal charges against certain landlords who had been harrasing tenants in ways ranging from mild verbal threats to physical assault. The most immediate effect of the charges was to deter the extra-legal tactics of the landlords and to increase the confidence and security of the tenants.

The major problem with affirmative action is that it is often expensive, time-consuming and unlikely to have immediate legal implications. These actions, however, produced major side benefits of an essentially non-legal character. Their most important long-term benefit was to educate tenants about the housing market and the law. The anti-trust suit, which charged collusion among landlords to fix prices, supplemented and highlighted the AATU campaign against outrageously high rents and helped to confirm in the tenant's own mind his feeling of victimization at the hands of the landlords. The disqualification of the judges for conflicts of interest showed tenants that decisions on landlord-tenant cases were not made in an impartial vacuum but rather in the context of a bias in favor of property owners. This gave further support to AATU claims that the

housing market problem in Ann Arbor is exacerbated by myriad interwoven interests among landlords, bankers, judges and local politicians.

In general, the whole range of legal activities related to the strike, including the eviction cases themselves, has played an important role in removing a cloak of myth from the law. These activities have reduced the tenant's feeling of helplessness when he is confronted by strange-looking documents, such as notices-to-quit and summonses, and have reassured him when the landlord threatens to ruin his credit rating or prevent him from renting anywhere in the city. Legal activities have increased the tenant's confidence in asserting his right to decent housing conditions and have helped to make him more militant in the face of a legal system that has represented the interests of property rather than people.

II. The Operation of the Legal Defense Group

A rent strike legal defense team is responsible for all legal research, legal defense in eviction cases, the taking of affirmative action, and other legal problems such as possible injunctions and conspiracy and damage suits against tenants. In Ann Arbor, a law student on the steering committee of the rent strike has coordinated the work of the legal defense group. He gathered together a large team of law students, lawyers and others (all except the lawyers were volunteers) to do the required work. Where legal expertise was necessary outside the courtroom (for example, in doing research), law students themselves seemed best qualified, although several "laymen" participated as well. The actual paperwork involved in preparing legal answers for eviction cases was also done by non-lawyers; all that was required was a very brief training period. The coordinator, therefore, had little trouble assembling a team that was able to accomplish all legal tasks except actual appearances in court. This was important because the lawyers' paid time could be reduced to making necessary court appearances.

In addition, the participation of individuals who were neither law students nor lawyers emphasized that the law does not belong exclusively to the formally initiated.

Although legal defense plays an important role throughout the duration of the strike, it is most important when landlords begin to carry out the eviction process against tenants. In dealing with the problem of summonses served on tenants, the legal defense team must not expect that these summonses will be served at a moderate and constant rate. In Ann Arbor, the landlords served all the summonses at once, both because it was easier for them to proceed in this way and because they knew it would place a great strain on the legal staff of the rent strike. In addition, landlords know that there will be a mass exodus of students at the end of the academic year. Since a person cannot ordinarily have a money judgment assessed against him unless the court has obtained personal jurisdiction, the landlords will try to serve the summonses to strikers before they leave. For these reasons, the legal team must be fully prepared in anticipation of intensive periods of interviewing strikers in order to prepare defenses and to write legal answers. This can be done only by having large numbers of people on call at all times. In the Ann Arbor situation, the AATU ran into difficulties, particularly at the end of the academic year, because they were not fully prepared to handle the onslaught.

Most of the basic research should be done before the strike begins. However, as noted earlier, many problems occur because of attempts by the landlords and the courts to speed up the litigation. Continuing research, often on very short notice, is necessary to prevent any precedents that might ease the backlog of cases.

A few words must be said about the process of hiring lawyers. The most important criteria should be: (1) the lawyer's record of dependability; (2) his readiness to state at the outset precisely what he is capable of doing and at what price; (3) whether he is willing to make a commitment, once he has decided to work for the strike, to see it through to the end, and; (4)

whether he is willing and eager to consult with the group he represents regarding any tactical decisions. The failure of the group and the lawyer to reach an understanding on these issues created serious problems in Ann Arbor. The first lawyer of the AATU, who had a reputation for being knowledgeable in landlord-tenant law, failed to satisfy these criteria. In fact, at a very crucial point in the strike he withdrew his services completely. By that time, the AATU had paid his firm \$5,000, which exhausted all the money in its strike fund that could be allocated for attorney's fees. The tenants managed to survive during the critical interim period after his departure by finding several lawyers willing to donate their time on a temporary basis. They have since been able to hire several dependable and competent young lawyers to handle the eviction cases, and two other well-known lawyers to handle the conspiracy suit. This experience was the hard way to learn a very simple lesson—that prospective lawyers must be thoroughly probed about how far their commitment extends before any strike action begins.

III. Final Remarks

It was emphasized at the beginning of this article that the law should be considered one of several possible tactics that can be used to aid the more fundamental economic struggle of the rent strike. Three final points will be made to clarify and expand on this idea.

The first is that under some circumstances the law will be of no advantage whatsoever. In many areas of the country, where the common law is the only guideline and where property interests are firmly entrenched, tenants will not be able to remain in their apartments legally very long after beginning a strike. This, however, does not mean that a rent strike is not possible. If the tenants are already well organized or can be organized easily, are militant and can gain the support of a significant minority of the community, they may still be able to strike because the local authorities or the landlords may not

want the confrontation that is likely to occur when the tenants are removed by force from their apartments. If the law is unfavorable and the tenants themselves are not prepared to undergo substantial risks, then a rent strike will not be appropriate. Perhaps emphasis on the building of the tenant organization (more difficult under these circumstances), accompanied by milder forms of protest, may be all that is possible. In any case, lawyers for a nascent tenant movement must be prepared for the possibility that their role will be negligible.

The second point, alluded to above, is that even after a rent strike is underway, both the landlords and the courts are certain to adopt tactics designed to defeat the purpose of the strike strategy. The experiences of Ann Arbor are most revealing in this respect. The responses of the landlords and the courts to the strike were as follows:

1. April, 1969—landlords brought a conspiracy suit against 91 striking tenants, including most members of the original AATU steering committee. They failed to obtain a preliminary injunction against the strike both because of an astute response by AATU lawyers and because of extra-legal factors, which will be considered below. The AATU responded by filing a counterclaim and successfully requesting extensive discovery, thus placing a considerable burden on the landlords. For these reasons, the landlords will probably drop the suit before it goes to trial sometime in the spring of this year.

2. June, 1969—Lawyers for the landlords, aided by an ambiguous law and a cooperative judge, learned how to request court costs more effectively. As a result, court costs have been steadily rising against tenants.

3. December, 1969—Local judges adopted a new court rule ordering that all back rents that a landlord claims are owed him be deposited into a court-controlled escrow fund. If tenants fail to do this, summary judgments will be issued against them. Previously, tenants paid their rent to the AATU escrow fund. The effect of the new rule has been to cripple tenant control over escrow money. (The courts have been unable to attach the AATU escrow fund itself since it is located in Canada.) When

strikers are poor, such a court rule could have an even more serious effect. Poor tenants, constantly pressured by more immediate needs like food and clothing, are frequently unable to afford the full rent and, therefore, cannot regularly set aside this amount to cover some future court action. When they go to court and cannot produce all the back rent, they face summary judgment, even though the landlord may not ultimately be entitled to the rent.

4. January, 1970—The single judge trying eviction cases began issuing summary judgments against tenants after landlords began suing only for possession rather than for both possession and back rent as before. According to newspapers in Ann Arbor, the judge reasoned as follows: if the landlord is seeking only possession, it is not within the province of the judge or jury to determine the exact amount of rent due but merely whether any rent is due. Since some rent is certainly due, possession is granted.

This reasoning has the practical effect of saying that all the rent is due, for the tenant must then pay the full amount within ten days or be evicted. Such reasoning is an amazing demonstration of legal sophistry. By deciding this way, the judge has eliminated any chance for the tenant to make his case before a jury. This not only frustrates the intent of M.P.A. 297, but also greatly eases court congestion, thus undermining the cornerstone of the strike's legal strategy. The rent strike strategy depends on prolonged pressure on landlords. However, the experience in Ann Arbor suggests that the courts are reluctant to allow such attacks on the inequitable management of rental properties. It seems to be only a matter of time before the courts move in a direction favorable to landlords. Once this fact is recognized, energy can be directed toward the only available strategy; namely, prolonging that period of time. Legal tactics will be effective in the long run only within the framework of a more comprehensive strategy. The impact will largely depend on how much community support can be mobilized for the tenants' organization. If an

effective climate of support can be created, political pressures will be generated that may deter aggressive behavior by landlords and induce decisions by courts that will allow the battle to be fought on the economic level.

In Ann Arbor, the AATU obtained the endorsement of the United Auto Workers International (nation-wide), the Michigan New Democratic Coalition, the Washington County Democratic Party, four members of the Ann Arbor City Council and the chairmen of the Ann Arbor Housing Commission and the Human Relations Commission. The AATU also picketed the homes of the more unpopular landlords (including the state crime commissioner) and organized marches on the business offices of several of the major landlords to demand recognition and negotiations. While it would be difficult to trace precisely the effects of this strategy on the decisions made by the landlords and the courts, there are strong indications that outside pressure played an important part in preventing the preliminary injunction against the AATU in the conspiracy suit and the summary judgments in the eviction cases. It is no mere coincidence that the more recent court decisions that have hurt the strike came at a time when AATU activity was directed more toward building the organization internally than toward maintaining community support or carrying out militant activities.

In the last analysis, while it is true that a legal defense team must always be prepared to make the appropriate legal responses when defending tenants, their actions must be viewed in the context of a widespread political and organizational campaign. The use of the law alone will never bring justice if those who are enemies of the strike do not feel the pressure of a broadly based, well coordinated political movement.

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