

01-07-17 Enforcing Codes with Compassion

I was fortunate enough to grow up in a household without prejudice and one with compassion. Having grown up during the great depression, my parents could have been hardened to all sorts of rigid conclusions but instead just seemed thankful. Oh, sure they were hard working people, for the importance and necessity of hard work was one lesson learned from their own childhood. But, still and to their credit, they did not lose a sense of caring and understanding. In fact, they had memories of sleeping in rooms/porches that were so cold that snow drifted in and such long lapses between laundry days that by the end of the week, socks stood up with a sticky stiffness. But, still they were grateful because there were many with less; far, far less. It was the time of hobos, campsites, moonshine and train hopping. My parents had a roof over their heads and a stove in the middle of the house. They had plenty compared to some.

I thought of them today as I taped a notice of “Uninhabitable” to an apartment door. While the tenants left only the day before, I wanted to prevent the possibility of a future tenant living without heat, with rotting windows, ceiling leaks and ancient non-working smoke detectors. The code can save lives. This place did not meet Massachusetts’s housing code, 105 CMR 410.000: Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II). While, as the title indicates, it describes “only” the minimum standards, it never fails to interest me how people view this code very differently, depending on the lenses particular to their perspective. For instance, if I am speaking to the owner of a rental property, they might view the code as harsh and unrealistic and too demanding. If I am speaking to a tenant who is hoping to buy some time without paying rent, then the code is seen as handy indeed. Then there are other times when people hope to use the code as a basis for cleaning up the neighborhood. All those perspectives can be valid applications of this code.

To the owners, I explain that this is their responsibility, like it or not, that goes part and parcel with being “landlords”. I also tell them there is a proper process for eviction. To the hopeful tenant, I can get repairs accomplished and that’s a good thing, but don’t plan on withholding rent without legal advice. For people hoping to clean up the neighborhood, that, in fact, is sometimes the final outcome when owners are given orders, can’t afford to comply and sell the property instead. Those places can be renovated or demolished and rebuilt.

These codes are intended to provide guidance only, with the local board of health ordering additional requirements deemed necessary or allowing variances when the board of health, in its opinion, deems “the enforcement thereof would do manifest injustice; provided that the decision of the board of health shall not conflict with the spirit of these minimum standards.”

The fact that our forefathers included the phrase, “manifest injustice”, convinces me that they, like my parents, knew compassion and recognized the importance of it. Their speaking of the “spirit of these minimum standards” tells me that they passed the torch of responsibility on to those accepting it. It is given in spirit and applied in spirit. The compassionate spirit of this code is to be remembered and kept foremost in mind when referring to it and when applying it.

I have been in houses that structurally met the list of items in the code but were so filthy that they were uninhabitable. And I have been in trailers that might not meet every item in the code but were cozy and clean, organized and safe.

Then, on occasion, there are places out of the ordinary and people who are also out of the ordinary classifications. What is ordinary, anyway? The word, “ordinary”, is implied in the Sanitary Code in connection with use of water and, when it comes to amperage of the electricity,

the supply should be “sufficient to meet the reasonable needs of the occupants”. Ordinary use of water and reasonable needs for electricity certainly has changed over the decades but in each decade it does have a meaning and it can be worked out. However, our forefathers were not talking about exclusions or class codes. No neighborhood association rules either. Pink flamingos and multi-colored Christmas lights were not discussed. However, sunlight and safety, warmth and weather-proof were.

Some situations require more patience than others. If housing is deemed sufficient, if not ideal, and if the strictest enforcement of the code is deemed a manifest injustice, then frequent contact with owners and tenants will be necessary while improvements can be made. The Board of Health may actually have to grant a waiver for a limited time, while those arrangements are made, as long as that waiver is in keeping with the spirit of the code’s minimum standards. That is the compassionate thing to do. Or, an Order to Correct is deemed of sufficient importance to keep the occupants safe and the owner must quickly comply with those orders. That is also the compassionate thing to do.

The property manager called me promptly after being notified of the uninhabitable status, with all kinds of promises to make things right. We shall see.

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