

A Landlord May be Liable for Injuries Caused to Others by Their Tenants

“Landlords must be proactive in situations where the tenant’s conduct causes a serious risk of health and safety to other residents or even other adjoining land owners.”

In a decision by the Arizona Court of Appeals, *Klimkowski v. De La Torre*, the Court imposed liability upon a landlord it said knew or should have known that a tenant had "created a nuisance". A "nuisance" is generally defined as an unreasonable interference with a person's use and enjoyment of his property.

In the *Klimkowski* case, the landlord rented their property to tenants who erected a storage shed that was filled by the tenants with paints and related painting supplies. An adjoining landowner observed that the tenant's daughter was playing with matches near the storage shed and notified the landlord of this potentially dangerous situation but the landlord refused to take any action against the tenants. A few months later the storage shed burned and an explosion took place that caused burning materials to fall on the adjoining landowner's property. The adjoining landowner then sued the landlord and the Court stated that a landlord was liable under such cases "not from any action or inaction on the part of the tenant, but rather from the landlord's own failure to eliminate a dangerous condition of which he has knowledge when the leased property becomes under his control".

It should be noted that in this case the tenants occupied the property on a month-to-month tenancy basis but the landlord had decided to renew the lease even though it could have been terminated earlier. Given the month-to-month tenancy, the Court was inclined to impose liability because the landlord had the discretion to terminate the lease upon a thirty-day notice at any time. However, this fact does not distinguish this holding from the general proposition that landlords must be proactive in situations where the tenant's conduct causes a serious risk of health and safety to other residents or even other adjoining land owners (or neighbors). In those instances when tenant's conduct constitutes a health and safety risk, the appropriate notice to be provided to the tenant is a 5-10 Day Notice in accordance with A.R.S. § 33-1368(A). However, it also should be noted that the amendments to the Arizona Residential Landlord and Tenant Act as effective July 17, 1994, provided an additional basis upon which to terminate the tenancy of a tenant in such instances. A.R.S § 33-1368 (A) now provides that "A breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, his agent or another tenant constitutes sufficient basis upon which to provide an immediate termination notice to a tenant for a material and irreparable breach. In such instances, presumably, 24 or 48-hour notice would be appropriate in order to terminate the tenancy in a more expedient manner. Obviously, these matters must be reviewed with legal counsel before they are pursued but the amendment to the Residential Landlord and Tenant Act does allow the landlord greater latitude now in making

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these determinations which are extremely important for the health and safety of other residents as well as potential exposure that exists to the landlord if action is not taken against the offending tenant.

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