

Landlords Should be Aware of 'Foreseeable' Criminal Activity

A resident of an apartment community in a high crime area was checking his mail at the property's mailbox when he was approached by an individual demanding money. The resident attempted to run, but was shot and robbed by the assailant. Another resident called the police after the individual attempted to steal his car. The suspect ultimately escaped on foot.

The injured resident brought suit against the community, claiming that it negligently "failed to keep the premises safe."

Prior to the trial, the resident learned that 20 separate crimes occurred at the property the year before his attack. These included eight burglaries, vehicles burglarized or stolen and three incidents of mailbox vandalization.

There also were two encounters, by both a resident and a security guard, with suspicious individuals on the property.

Before the trial, the landlord filed a motion to exclude any evidence of the "prior crimes and suspicious activity," arguing that it could give the jury a "negative impression" of the landlord.

The trial judge agreed with the landlord's motion, stating that "each individual incident was not sufficiently similar to the attack" to make them admissible before the jury.

On appeal, the court set forth the basic duty of the landlord to exercise ordinary care to "protect tenants against third party criminal attacks which are reasonable foreseeable."

The Court went on to indicate that if criminal act is reasonably foreseeable the landlord fails to take steps to insure resident safety, he or she can be liable.

The test to determine whether the act is "foreseeable," said the court, is one "substantially similar in type to the previous criminal activities occurring on or near the premises so that a reasonable person would take ordinary precautions to protect his or her customers or tenants against the risk posed by that type of activity." The prior crime should "attract the landlord's attention to the dangerous condition." As for determining whether the act was similar and foreseeable, the court said it would look at the "location, nature and extent of the prior criminal activities and their likeness, proximity or other relationship to the crime in question."

This determination rests with the jury, meaning that it is very difficult for a landlord to escape liability without the matter proceeding to trial and verdict.

The appellate court concluded that the landlord knew of the high number of violent incidents on his property and was concerned enough to hire additional security guards. The court concluded that the increase in property crimes at the community "is relevant to

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whether the defendant (landlord) should have foreseen a risk of personal injury to their tenants from an attack such as the one on the tenant."

The appellate court found that only two incidents, which were not criminal in nature, could be excluded by the trial court. As for the prior crimes, the court found these to be relevant to the issue of foreseeability. If the jury determined the incident was foreseeable, the court would then go on to assess whether the landlord took sufficient steps to prevent the assault.

The ultimate decision in this case causes serious concern to the multi-family industry.

Acts that occur at or near a property may be deemed relevant for a jury to assess whether a landlord can be held liable for such incidents. If the jury determines that criminal activity was foreseeable, an examination of the landlord's steps in preventing crime will be closely examined by it.

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